CLERK'S COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1946

No. 945

JOHN P. McWILLIAMS, PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

No. 946

ESTATE OF SUSAN P. McWILLIAMS, DECEASED, JOHN P. McWILLIAMS, EXECUTOR, PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

No. 947

BROOKS B. McWILLIAMS, PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 24, 1947.

CERTIORARI GRANTED MARCH 3, 1947.

INDEX

	PAGE
Docket Entries	1
Petition	3
Exhibit A—Notice of Deficiency	5
Answer	10
Opinion	11
Decision	16
Petition for Review	17
Notice of Filing Petition for Review	17
Statement of Points	19
Stipulation of Facts—Docket No. 5945	20
Joint Exhibit A-1	23
Joint Exhibit B-2	25
Joint Exhibit C-3	28
Joint Exhibit D-4	32
Joint Exhibit E-5	37
Stipulation of Facts—Docket No. 5946	43
Joint Exhibit A-1	45
Joint Exhibit B-2	46
Joint Exhibit C-3	48
Joint Exhibit D-4	49
Stipulation of Facts—Docket No. 5947	54
Joint Exhibit A-1	57
Joint Exhibit B-2	60
Joint Exhibit C-3	64
Joint Exhibit D-4	67
Joint Exhibit E-5	73

PAGE

Excerpts from Transcript of Hearing 78

Testimony for Petitioners

	DI.	CR.	REDI.	RECR.
John P. McWilliams	78			
John P. McWilliams (recalled)	88			

Testimony for Respondent

	DI.	CR.	REDI.	RECR.
Allan C. House	84			

Designation of Contents of Record on Review 89
Clerk's Certificate 91
Order Enlarging Time 91
Order of CCA Extending Time to File Record 92
Order of CCA Consolidating Cases 94

UNITED STATES CIRCUIT COURT OF APPEALS

For the Sixth Circuit.

Causes Argued and Submitted (Oct. 17, 1946) 97
Judgment, Docket No. 10,240 (Dec. 2, 1946) 97
Judgment, Docket No. 10,241 (Dec. 2, 1946) 98
Judgment, Docket No. 10,242 (Dec. 2, 1946) 99
Opinion (Dec. 2, 1946) 101
Certificate of Clerk (Dec. 13, 1946) 107
Orders allowing certiorari 108

THE TAX COURT OF THE UNITED STATES

Docket No. 5945

JOHN P. McWILLIAMS,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

APPEARANCES:

For Taxpayer:
John A. Hadden, Esq.

For Commissioner:
Lawrence R. Bloomenthal, Esq.

DOCKET ENTRIES

1944

Sept. 1—Petition received and filed. Taxpayer notified. Fee paid.

Sept. 4—Copy of petition served on General Counsel.

Oct. 2—Answer filed by General Counsel.

Oct. 2—Request for hearing in Cleveland, Ohio, filed by General Counsel.

Oct. 7—Notice issued placing proceeding on Cleveland, Ohio calendar. Service of answer and request made.

1945

Feb. 20—Hearing set April 16, 1945, Cleveland, Ohio.

Apr. 19—Hearing had before Judge Smith on merits, counsel to consolidate. Stipulation of facts filed at hearing. Briefs due 7-2-45; replies 7-20-45.

May 3—Transcript of hearing 7-19-45 filed.

1945

June 29—Brief filed by taxpayer.

July 5—Motion for leave to file the attached brief, brief lodged, filed by General Counsel. 7-5-45 Granted and served 7-6-45.

July 6—Copy of brief served on General Counsel.

July 20—Reply brief filed by taxpayer. 7-2-45 Copy served on General Counsel.

Aug. 20—Opinion rendered, Judge Smith, Decision of no deficiency will be entered. Copy served.

Aug. 20—Decision entered, Judge Smith, Div. 5.

Nov. 16—Petition for Review by U. S. Circuit Court of Appeals for the Sixth Circuit filed by General Counsel.

Nov. 19—Notice of filing petition for review sent to John A. Hadden filed.

Nov. 26—Proof of service of petition for review filed.

Dec. 11—Motion for extension to 2-14-46 to prepare and transmit the record filed by General Counsel.

Dec. 11—Order, extending time to 2-14-46 to prepare and transmit the record, entered.

1946

Feb. 11—Certified copy of an order from Sixth Circuit extending time to 4-15-46 to prepare and transmit the record filed.

Mar. 22—Statement of Points filed by General Counsel with statement of service thereon.

Mar. 22—Designation of contents of record on review filed by General Counsel. Statement of service thereon.

PETITION

(Filed September 1, 1944)

The above named Petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated June 6, 1944, bearing the symbols "IRA:90D". For the basis of his proceeding petitioner alleges as follows:

1. The Petitioner's address is 590 The Arcade, Cleveland 14, Ohio.

2. The statutory notice of deficiency, a copy of which is attached hereto, marked "Exhibit A", was mailed to the Petitioner on June 6, 1944.

3. The taxes in controversy are an alleged deficiency in income tax liability for the taxable year ended December 31, 1941, in the amount of $7,110.33.

4. The determination of the tax set forth in said notice of deficiency is based upon the following errors:

A. The Commissioner erred in disallowing a long term capital loss of $21,276.53 on the sale of certain stocks sold by the Petitioner during the year 1941.

B. The Commissioner erred in determining that there was a deficiency of $7,110.33 in taxes due from the taxpayer for the taxable year ended December 31, 1941.

5. The facts upon which the Petitioner relies as the basis for his appeal are as follows:

A. Taxpayer during the taxable year ended December 31, 1941, sold the securities set forth below on the dates shown, incurring the long term capital loss set forth:

DATE	STOCK	LONG TERM CAPITAL LOSS
July 3	500 sh. International Nickel of Canada, Ltd., with a loss claimed of	$ 4,605.69
Dec. 10	200 sh. International Nickel of Canada, Ltd., with a loss claimed of	2,945.30

DATE		STOCK	LONG TERM CAPITAL LOSS
Brought forward			$ 7,550.99
July 3	200 sh.	Eastman Kodak Co. with a loss claimed of	3,665.03
July 3	500 sh.	General Electric Co., with a loss claimed of	3,145.89
Dec. 10	200 sh.	General Electric Co., with a loss claimed of	2,188.31
July 3	100 sh.	Mosanto Chemical Co., with a loss claimed of	1,612.95
Dec. 10	100 sh.	Cerro de Pasco, with a loss claimed of	1,610.53
Dec. 10	100 sh.	Westinghouse Electric Co., with a loss claimed of	1,502.83
		Total	$21,276.53

All of said sales were made on the New York Stock Exchange and said stock was purchased on behalf of purchasers unknown to the taxpayer. In each instance the order for the sale of said securities was given to Curtiss, House & Co., stockbrokers of the City of Cleveland, Ohio, and was executed on the New York Stock Exchange in the regular manner through Clark, Dodge & Co., correspondents of the said Curtiss, House & Co. All of said securities had been acquired by the taxpayer more than eighteen months prior to their sale and the long term capital losses in the amount of $21,276.53 incurred by the taxpayer should therefore be allowed.

WHEREFORE, petitioner prays that this Court may hear proceedings and determine:

That the loss realized by taxpayer on the sale of said securities set forth above constitutes a long term capital loss, and that the Commissioner erred in disallowing said loss.

Petitioner further prays this Court to determine his proper tax for the year ended December 31, 1941, and

that it grant such further relief to petitioner as it may deem to be just and equitable.

JNO. A. HADDEN,
Counsel for Petitioner.
1882 Union Commerce Building
Cleveland 14, Ohio, Main 2905.

STATE OF OHIO }
CUYAHOGA COUNTY, } ss:

John P. McWilliams, being first duly sworn, deposes and says that he is the taxpayer in question; that he has read the contents of the foregoing petition and that the facts therein stated are true as he verily believes.

JOHN P. McWILLIAMS.

Sworn to before me and subscribed in my presence this 24th day of July, 1944.

(SEAL) MARIAN DORATY, *Notary Public.*

My Commission Expires Feb. 4, 1945.

EXHIBIT "A"

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Cleveland 15, Ohio

June 6, 1944

OFFICE OF — REGISTERED
INTERNAL REVENUE AGENT IN CHARGE
Cleveland Division
Cleveland
IRA:90D

Mr. John P. McWilliams,
590 The Arcade,
Cleveland, Ohio.

Dear Mr. McWilliams:

You are advised that the determination of your income tax liability for the taxable year ended December 31,

1941 discloses a deficiency of $7,110.33 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Cleveland 15, Ohio, for the attention of IRA:90D. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

JOSEPH D. NUNAN, JR.,
Commissioner,
By (Signed) J. S. ROWLAND,
Acting Internal Revenue Agent in Charge.

Enclosures:
Statement
Form of waiver
AF:egh

STATEMENT

CLEVELAND
IRA:90D

In re: Mr. John P. McWilliams,
590 The Arcade,
Cleveland, Ohio.

Tax Liability for the Taxable Year Ended December 31, 1941

	Liability	Assessed	Deficiency
Income Tax	$31,170.88	$24,060.55	$7,110.33

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated October 2, 1943, to your protest sworn to December 23, 1943 and to the statements made at the conference held on January 5, 1944.

A copy of the statutory notice of the deficiency together with a copy of this statement has been mailed to your representative, Mr. John A. Hadden, 1882 Union Commerce Building, Cleveland, Ohio, in accordance with the authority contained in the power of attorney executed by you and on file with this office.

Adjustments to Net Income

Taxable Year Ended December 31, 1941

Net income as disclosed by return		$43,233.52
Unallowable deductions and additional Income:		
(a) Interest	$ 160.71	
(b) Long term capital loss	21,751.58	
(c) Partnership loss	767.65	22,679.94
Net income adjusted		$65,913.46

Explanation of Adjustments

(a) Interest received of $160.71 on corporation bonds which were acquired from your father's estate has been included in your taxable income.

(b) Under Item 7(b) of your return for the year 1941 you claimed net long-term losses from the sale or exchange of capital assets aggregating $28,113.43. The following losses claimed from the sale of securities have been disallowed under the provisions of Section 24(b) of the Internal Revenue Code:

DESCRIPTION	LOSS CLAIMED
300 International Nickel of Canada	$2,914.12
200 Eastman Kodak	3,665.03
500 General Electric	3,145.89
200 International Nickel of Canada	1,691.57
100 Monsanto Chemical	1,612.95
100 Cerro de Pasco	1,610.53
200 General Electric	2,188.31
200 International Nickel	2,945.30
100 Westinghouse	1,502.83
Total	$21,276.53

The loss claimed in Item 7(b) is further decreased by the disallowance of $475.05 claimed on the sale of Kirtland Club stock which is not a proper deduction for income tax purposes and results in a total increase of $21,751.58 to your taxable income.

(c) The Fort Dickinson farm partnership loss claimed of $1,700.21 is reduced to $932.56, resulting in an increase of $767.65 to your taxable income.

COMPUTATION OF TAX

Taxable Year Ended December 31, 1941

ALTERNATIVE TAX:		
Net income adjusted		$65,913.46
Plus:		
Net long term loss		6,361.85
Ordinary net income		$72,275.31
Less:		
Personal exemption	$1,500.00	
Credit for dependents	1,600.00	3,100.00
Balance (surtax net income)		$69,175.31

Balance (surtax net income)	$69,175.31
Less:	
Earned income credit	1,400.00
Net income subject to normal tax	$67,775.31
Normal tax at 4% on $67,775.31	$ 2,711.01
Surtax on $69,175.31	30,493.43
Partial tax	$33,204.44
Minus:	
30% of net long term loss	1,908.56
Alternative tax	$31,295.88
Less:	
Income tax paid to a foreign country	125.00
Total income tax	$31,170.88
Income tax assessed:	
Original, account No. 332622	24,060.55
Deficiency of income tax	$ 7,110.33

ANSWER

(Filed October 2, 1944)

Comes Now the Commissioner of Internal Revenue by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition herein, admits and denies as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.

3. Admits that the taxes in controversy are a deficiency in income tax liability for the taxable year ended December 31, 1941 in the amount of $7,110.33.

4 A. and B. Denies that in the determination of the deficiency herein the respondent erred in the manner and form as alleged in subparagraphs A and B of paragraph 4 of the petition.

5 A. For lack of sufficient information upon which to base a belief as to the truth of the allegations of fact contained in subparagraph A of paragraph 5 of the petition, respondent hereby denies the same.

Denies generally each and every allegation contained in the petition not hereinbefore specifically admitted, qualified, or denied.

Wherefore, it is prayed that the taxpayer's petition be denied and that the respondent's determination be in all respects approved.

(Signed) J. P. Wenchel, TFC
Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:

DeWitt M. Evans,
Division Counsel,

Lawrence R. Bloomenthal,
Special Attorney,
Bureau of Internal Revenue.

OPINION

(Promulgated August 20, 1945)

5 T. C. No. 73

THE TAX COURT OF THE UNITED STATES

JOHN P. MCWILLIAMS, PETITIONER, v. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

ESTATE OF SUSAN P. MCWILLIAMS, Deceased, JOHN P. MCWILLIAMS, Executor, PETITIONER, v. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

BROOKS B. MCWILLIAMS, PETITIONER, v. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

Docket Nos. 5945, 5946, 5947. Promulgated August 20, 1945.

Sales of listed securities through the New York Stock Exchange by several members of a family followed by purchases through the Exchange of like securities at the same prices by other members of the family, *held*, not sales "between members of the family" within the meaning of section 24 (b) (1) (A) of the Internal Revenue Code. *Pauline Ickelheimer*, 45 B. T. A. 478, followed.

John A. Hadden, Esq., for the petitioners.
Lawrence R. Bloomenthal, Esq., for the respondent.

OPINION

SMITH, *Judge*: These proceedings, consolidated for hearing, involve income tax deficiencies as follows:

DOCKET NO.	PETITIONER	YEAR	DEFICIENCY
5945	John P. McWilliams	1941	$7,110.33
5946	Estate of Susan P. McWilliams	1940	296.75
5947	Brooks B. McWilliams	1940	1,845.52
		1941	4,184.07

Opinion

In the determination of the deficiencies the respondent has disallowed the deduction of capital losses which the taxpayers claimed on the sale of securities, on the ground that they constituted losses on sales of property made directly or indirectly between members of a family as defined in paragraph (2) (D) of section 24 (b) of the Internal Revenue Code.

Petitioners, John P. McWilliams and Brooks B. McWilliams, are husband and wife, and are residents of Cleveland, Ohio. Susan P. McWilliams, deceased, was the mother of John P. McWilliams. She died in November, 19[illegible], and John P. McWilliams was appointed executor of her estate. The income tax returns for the years involved were filed with the collector of internal revenue for the eighteenth district of Ohio.

John P. McWilliams, hereinafter referred to as petitioner, is president of the Youngstown Steel Door Co. In 1940 and 1941 he bought and sold a considerable amount of securities for his own and his wife's account, and also for his mother's account until her death. Petitioner's wife and mother both had large estates of their own which petitioner managed for a number of years.

The sales of securities which gave rise to the losses here in controversy admittedly were for the purpose of establishing tax losses. In each instance petitioner would give his broker an order by phone to sell for his or his wife's, or his mother's account a certain number of shares of a particular stock at market and, at the same time would instruct the broker thereafter to purchase at as nearly the same price as possible a like number of shares of the same stock for the account of one of the others. In each instance the broker was told that the sale was for the purpose of establishing a tax loss.

During the taxable years the following shares of stock were sold by petitioner for his individual account and for his wife's account:

DOCKET NO. 5945—JOHN P. MCWILLIAMS YEAR 1941

700 shares of International Nickel of Canada, Ltd.
200 shares of Eastman Kodak Co.

700 shares of General Electric Co.
100 shares of Monsanto Chemical Company
100 shares of Cerro de Pasco
100 shares of Westinghouse Electric Co.

DOCKET NO. 5947—BROOKS B. MCWILLIAMS YEAR 1940

300 shares of General Electric
100 shares of Standard Oil Co. of N. J.
200 shares of International Nickel Co. of Canada, Ltd.

YEAR 1941

1000 shares of Basic Refractories, Inc.
300 shares of Libby-Owens-Ford Glass Co.
100 shares of E. I. DuPont deNemours Co.
200 shares of General Motors Corporation
100 shares of American Tel. & Tel. Co.
200 shares of Liggett & Myers Tobacco Co.

All of the above securities were sold pursuant to orders given to Curtiss-House & Co., stockbrokers in Cleveland, Ohio, and were executed on the New York Stock Exchange in the regular manner by Clark, Dodge & Co., members of the New York Stock Exchange and correspondents of Curtiss-House & Co. The securities had all been acquired and held by the taxpayers more than 18 months prior to their sale. The purchasers of the securities were unknown to the taxpayers.

At the time that petitioner placed the orders for sale of the above securities for his individual account he instructed his brokers to purchase a like number of the same shares at as nearly the same price as possible for the account of his wife. Likewise, when giving the orders to sell the shares for his wife's account he instructed his brokers to purchase a like number of the same shares for his individual account. These instructions were carried out and new certificates bearing different numbers from those sold were issued to the taxpayers. The purchase orders were executed in the same manner as the sales orders.

Petitioner's wife in 1940 and 1941 owned property greatly in excess of the amounts involved in the trans-

actions under consideration. During all of her married life her securities have stood in her own name and have been kept separate from those of the petitioner. She has maintained a separate bank account and she and petitioner have filed separate income tax returns.

On the above-mentioned sales petitioner claimed long-term capital losses of $21,276.53 in 1941 and his wife $5,592.49 in 1940, and $13,946.95 in 1941. The deductions were disallowed by the respondent as coming within the provisions of section 24 (b) of the Internal Revenue Code. The correctness of respondent's determination in this respect is the only question presented in these proceedings.

Under substantially the same circumstances as those described above, relating to the sales and purchases of securities by petitioner and his wife, petitioner on November 28, 1940, sold 100 shares of Eastman Kodak Co. stock for the account of Susan P. McWilliams and on the same day purchased a like number of the same shares for his individual account. A long-term capital loss on the sale of those shares in the amount of $1,755.79 was claimed in the return filed by Susan P. McWilliams, and was disallowed by respondent.

Section 24 (b) provides in material part as follows:

> SEC. 24. ITEMS NOT DEDUCTIBLE.
>
> * * * * * * *
>
> (b) Losses From Sales Or Exchanges Of Property.
>
> (1) Losses Disallowed.—In computing net income no deduction shall in any case be allowed in respect of losses from sales or exchanges of property, directly or indirectly—
>
> (A) Between members of a family, as defined in paragraph (2) (D);
>
> * * * * * * *
>
> (D) Between grantor and a fiduciary of any trust.

We think that the question presented here is controlled by our decision in *Pauline Ickelheimer*, 45 B. T. A. 478; affd. (C. C. A., 2nd Cir.), 132 Fed. (2d) 660. In that case

the taxpayer's husband, acting as her attorney in fact, sold for her account over a period of nine days $100,000 face value of Postal Telegraph & Cable Corporation bonds and within a day or two after such sales he repurchased a like number of the same bonds, acting as trustee of a trust of which his wife was beneficiary. All of such sales and purchases were made through a broker dealing on the New York Stock Exchange. We held, by a divided Court, that the sales of the bonds were not sales between petitioner and her husband, that is, "between the fiduciary of a trust and a beneficiary of such trust" within the meaning of section 24 (a) (6) of the Revenue Act of 1936, as amended by section 301 (a) of the 1937 Act (section 24 (b) (1) (F) of the Internal Revenue Code), and that the loss thereon was deductible as a capital loss in the taxpayer's return for 1937. We said in our opinion that:

> • • • It is apparent that the sales of the bonds were made to purchasers other than the trustee of the trust. The fact that petitioner's husband as trustee purchased the bonds from the open market shortly thereafter does not convert the sales by petitioner and the purchases by her husband as trustee into indirect sales *between* petitioner and her husband as trustee. Nor does the fact that the transactions were carried out with a view to obtaining a loss deduction and to avoid the effects of section 118 so color these transactions that sales to others may be termed indirect sales from petitioner to her husband as trustee.
>
> Respondent contends that, since petitioner's husband acted for petitioner under power of attorney and for the trust as its trustee, one directing mind controlled the sales and purchases of the bonds so that the sales must be considered to have been indirectly made between petitioner and her husband as trustee. He asserts that the presence of a preconceived plan to permit a loss deduction for petitioner and yet obtain the bonds for the trust, plus the fact that the sales and purchases were directed by petitioner's husband, indicates that the bonds were sold,

indirectly, by petitioner to her husband as trustee for the trust. We can not agree. We find no authority in the law or the decided cases for the position taken by respondent. Nor do statements in Congressional Committee reports shed any light on the question.

That case stands for the proposition that where listed securities are sold through the Stock Exchange to an unknown purchaser, and like securities are purchased through the Exchange from an unknown seller by some person having a relationship to the seller such as that described in section 24 (b) (1), Internal Revenue Code, the transaction does not constitute a sale of property upon which a loss deduction is denied under the statute.

Since the statute treats alike sales of property between the fiduciary and a beneficiary of a trust and those between members of a family, our holding in the *Ickelheimer* case, supra, applies with equal force here.

While the facts in the instant proceedings as to the manner in which the sales and purchases were made differ somewhat from those in the *Ickelheimer* case, the differences are not substantial and do not afford sufficient grounds for distinguishing the cases on principle.

Decisions of no deficiencies will be entered.

DECISION

(Entered August 20, 1945)

Pursuant to the determination of the Court, as set forth in its Opinion, promulgated August 20, 1945, it is

ORDERED and DECIDED: That there is no deficiency in income tax for the calendar year 1941.

Enter:

(Signed) CHARLES P. SMITH, *Judge.*

PETITION FOR REVIEW

(Filed November 16, 1945)

The petitioner on review, the duly appointed, qualified and acting Commissioner of Internal Revenue, holding his office by virtue of the laws of the United States, here by petitions the United States Circuit Court of Appeals for the Sixth Circuit to review the decision entered by The Tax Court of the United States on August 20, 1945, ordering and deciding that there is no deficiency in income tax due for the calendar year 1941 from John P. McWilliams, the above-named respondent on review. This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

The taxpayer's Federal income tax return for the calendar year 1941, the taxable year involved, was filed with the Collector of Internal Revenue for the Eighteenth District of Ohio whose office is located in Cleveland, Ohio, and within the jurisdiction of the United States Circuit Court of Appeals for the Sixth Circuit.

(Signed) SAMUEL O. CLARK, JR., CAR
Assistant Attorney General

(Signed) J. P. WENCHEL, CAR
Chief Counsel,
Bureau of Internal Revenue,
Attorneys for Petitioner on Review.

NOTICE OF FILING PETITION FOR REVIEW

(Filed November 19, 1945)

To: John A. Hadden, Esq.,
1882 Union Commerce Building
Cleveland 14, Ohio

You are hereby notified that the Commissioner of Internal Revenue did, on the 16th day of November, 1945, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Sixth Circuit of

the decision of this Court heretofore rendered in the above-entitled case. Copy of the petition for review as filed is hereto attached and served upon you.

Dated this 19th day of November, 1945.

(s) B. D. GAMBLE, *Clerk,*
The Tax Court of the United States.

Service of copy of petition for review acknowledged this ..... day of November, 1945.

.....
Counsel for Respondent on Review.

NOTICE OF FILING PETITION FOR REVIEW

(Filed November 20, 1945)

To: Mr. John P. McWilliams
590 The Arcade
Cleveland 14, Ohio

You are hereby notified that the Commissioner of Internal Revenue did, on the 16th day of November, 1945, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for Review by the United States Circuit Court of Appeals for the Sixth Circuit of the decision of the Tax Court heretofore rendered in the above-entitled cause. A copy of the petition for review as filed is hereto attached and served upon you.

Dated this 16th day of November, 1945.

(Signed) J. P. WENCHEL, CAR
Chief Counsel,
Bureau of Internal Revenue,
Counsel for Petitioner on Review.

Personal service of the above and foregoing notice, together with a copy of the petition for review, is hereby acknowledged this ..... day of November, 1945.

(Signed) JOHN P. MCWILLIAMS,
Respondent on Review.

STATEMENT OF POINTS

(Filed March 22, 1946)

Now Comes the Commissioner of Internal Revenue, the petitioner on review herein, by and through his attorneys, Sewall Key, Acting Assistant Attorney General, and J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and makes this concise statement of points on which he intends to rely on the review herein, to-wit:

1. The Tax Court of the United States erred in entering its decision wherein and whereby it is ordered and decided that there is no deficiency in income tax for the calendar year 1941.

2. The Tax Court of the United States erred in failing and refusing to hold that there is a deficiency in tax for the calendar year 1941 in the amount of $7,110.33.

3. The Tax Court of the United States erred in holding and deciding that the facts do not disclose an indirect sale between members of a family within the meaning of Section 24(b)(1)(A) of the Internal Revenue Code.

4. The Tax Court of the United States erred in failing and refusing to hold and decide that the facts disclose an indirect sale by the taxpayer to his wife, Brooks B. McWilliams, within the meaning of Section 24(b)(1)(A) of the Internal Revenue Code.

5. The Tax Court of the United States erred in that its opinion and decision are not supported by but are contrary to its findings of fact.

6. The Tax Court of the United States erred in that its opinion and decision are not supported by but are contrary to the evidence and the facts as stipulated by the parties.

7. The Tax Court of the United States erred in that its opinion and decision are not supported by the evidence and are contrary to law.

(Signed) Sewall Key,
Acting Assistant Attorney General.

(Signed) J. P. Wenchel,
Chief Counsel,
Bureau of Internal Revenue,
Attorneys for Petitioner on Review.

Statement of Service:

A copy of this statement of points was mailed to John A. Hadden, Esq., 1882 Union Commerce Building, Cleveland 14, Ohio, attorney for respondent on review, on March 22, 1946.

(Signed) CHAS. E. LOWERY,
Special Attorney,
Bureau of Internal Revenue.

STIPULATION No. 5945

(Filed at Hearing April 19, 1945)

THE TAX COURT OF THE UNITED STATES

JOHN P. McWILLIAMS, *Petitioner,* vs. COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	}	Docket No. 5945

It is hereby stipulated and agreed, by and between the parties hereto, by their respective counsel, that the following facts are true and may be received and considered as being in evidence, subject, however, to the right of either party to introduce further evidence not inconsistent with the facts herein stipulated.

1. The petitioner, John P. McWilliams, is an individual whose place of business during the taxable years in question herein was 590 The Arcade, Cleveland, Ohio. The taxes in controversy are income taxes for the taxable year ended December 31, 1941, in the amount of $7,110.33. Notice of Deficiency was mailed by the Commissioner on June 6, 1944.

2. In computing said deficiency for the year ended December 31, 1941, the Commissioner disallowed a long-term capital loss claimed by the taxpayer amounting to $21,276.53 for the year e ed December 31, 1941, reported by

the taxpayer arising out of the sale of the following capital assets:

700 shares of International Nickel of Canada, Ltd.,
200 shares of Eastman Kodak Co.,
700 shares of General Electric Co.,
100 shares of Monsanto Chemical Company,
100 shares of Cerro de Pasco,
100 shares of Westinghouse Electric Company.

3. The aforesaid capital losses claimed by the taxpayer were disallowed by the Commissioner upon the ground that they were not allowable under the provisions of Section 24(b) of the Internal Revenue Code.

4. All of the securities listed in paragraph 2 herein were sold pursuant to orders given by the taxpayer for the sale of these stocks to Curtiss-House & Company, stockbrokers in Cleveland, Ohio, and were executed on the New York Stock Exchange in the regular manner by Clarke, Dodge & Company, members of the New York Stock Exchange and correspondents to said Curtiss-House & Company. Said securities had been acquired and held by the taxpayer more than eighteen months prior to their sale and were purchased by persons undisclosed to and unknown to the taxpayer at the time of sale.

5. At the time that orders were placed by this taxpayer for the sale of the above-listed securities, orders were given by him to Curtiss-House & Company to purchase stock of the same companies at approximately the same prices for Brooks B. McWilliams, wife of the taxpayer. Said orders were duly executed by the purchase of stock of the same companies represented by certificates bearing different numbers than those sold by the taxpayer; these purchase orders were executed in the regular manner on the New York Stock Exchange by Clark, Dodge & Company, the aforesaid correspondents of Curtiss-House & Company. The securities sold and purchased by the taxpayer and his wife, respectively, are set forth in the schedule attached hereto, together with other pertinent data, and marked "Joint Exhibit A-1."

6. It is further stipulated and agreed that photostatic copies of the customers' accounts carried on the books of Curtiss-House & Company in the names of John P. McWilliams and Brooks B. McWilliams, which are attached hereto, are true and correct copies of said book accounts and may be received in evidence as "Joint Exhibits B-2", and "C-3".

7. Photostatic copies of the income tax returns of John P. McWilliams for the years ended December 31, 1940 and 1941, which are attached hereto, may be received in evidence as "Joint Exhibit D-4", and "E-5".

JOHN A. HADDEN,
Counsel for Petitioner,

J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue,
Counsel for Respondent.

JOINT EXHIBIT No. A-1

Docket No. 5945

	No. of Shares	Stock	Price	Broker buying or selling stock	Certificate numbers
			John P. McWilliams sold:		
	100	General Electric	32-3/8	Thomson & McKinnon	760-996 & 97
	100	" "	32-3/8	Jackson & Curtis	758-141,142
	200	" "	32-1/4	Jesup & Lamont	& 143
	100	" "	32-1/4	Josephthal & Co.	
-10	100	" "	25-1/4	Pershing & Co.	722-031
	100	" "	25-1/8	Pershing & Co.	722-032
			Brooks B. McWilliams bought:		
-3	100	General Electric	32-3/8	Barr Cohen & Co.	818-421 to
	100	" "	32-3/8	R. L. Day & Co.	425 incl.
	100	" "	32-1/4	Auchincloss,Parker & Co	
	200	" "	32-1/4	Reynolds Fish & Co.	
10	100	" "	25-1/4	Carreau & Co.	832-874
	100	" "	25-1/8	Laird,Bissell & Meeds	832-875
			John P. McWilliams sold:		
-3	100	Eastman Kodak	133-3/8	Fenner & Beane	N 56-577
	100	" "	133-1/4	White Weld & Co.	N 56-367
			Brooks B. McWilliams bought:		
-3	100	Eastman Kodak	133-3/8	Morgan, Davis & Co.	N 60-140
	100	" "	133-1/4	Dominick & Dominick	N 60-141
			John P. McWilliams sold:		
-3	100	International Nickel	26-3/8	Pershing & Co.	367-604,
	100	" "	26-3/8	Lockwood,Peck & Co.	605
	100	" "	26-1/4	G.M.P.Murphy & Co.	606
	100	" "	26-1/4	Jesup & Lamont	365-074
	100	" "	26-1/4	Laidlaw & Co.	075
-10	200	" "	23	J. S. Bache & Co.	339-405
					332-469
			Brooks B. McWilliams bought:		
-3	200	International Nickel	26-3/8	Pressprich & Co.	404-531,532
	100	" "	26-1/4	Carlisle Mellick & Co.	-533
	100	" "	26-1/4	Baker Weeks & Harden	-534
	100	" "	26-1/4	Carlisle Mellick & Co.	-535
-10	200	" "	23	J.W.Seligman & Co.	411-861,862

Joint Exhibit No. A-1

Docket No. 5945
Joint Exhibit A-1, page 2

Date	No. of Shares	Stock	Price	Broker buying or selling stock	Certific Number
1941			John P. McWilliams sold:		
7-3	100	Monsanto Chemical	83	Carlisle Mellick & Co.	(N 31-74
			Brooks B. McWilliams bought:		
7-3	100	Monsanto Chemical	83	Harris Upham & Co.	(N 35-53
			John P. McWilliams sold:		
12-10	100	Cerro de Pasco	25-3/4	J.H.Oliphant & Co.	(122-40
			Brooks B. McWilliams bought:		
12-10	100	Cerro de Pasco	25-3/4	Hoppin Bros. & Co.	(131-81
			John P. McWilliams sold:		
12-10	100	Westinghouse Elec.	72-7/8	Carreau & Co.	(231-23
			Brooks B. McWilliams bought:		
12-10	100	Westinghouse Elec.	72-7/8	E. Hutton & Co.	(251-09

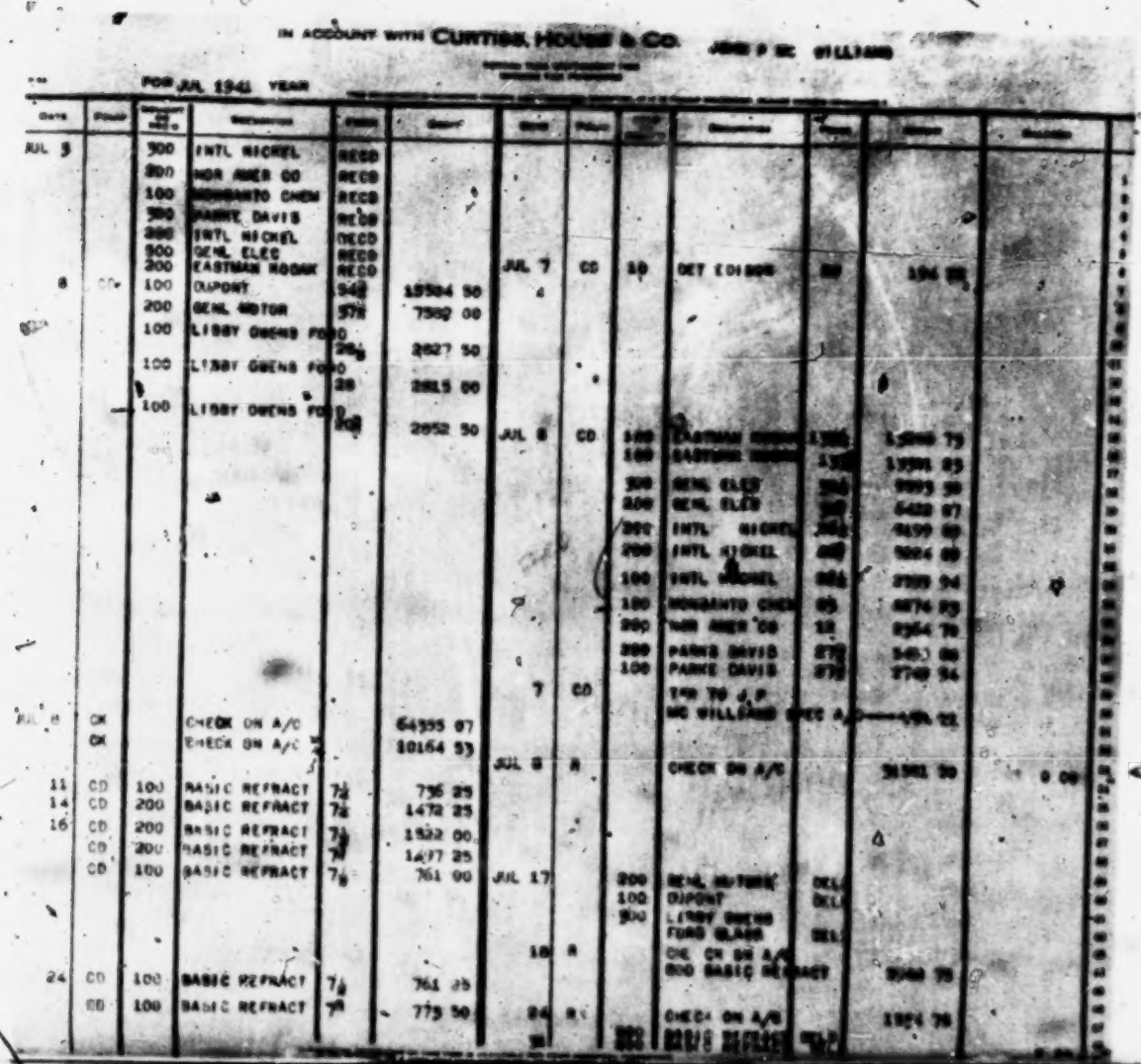
The amount received by taxpayer in each instance was the price indicat less commissions and taxes. The amount paid by Brooks B. McWilliams i each instance was the price plus commissions and taxes.

JOINT EXHIBIT No. B-2

ACCOUNT WITH CURTISS, HOUSE & CO.

FOR NOV 1940 YEAR

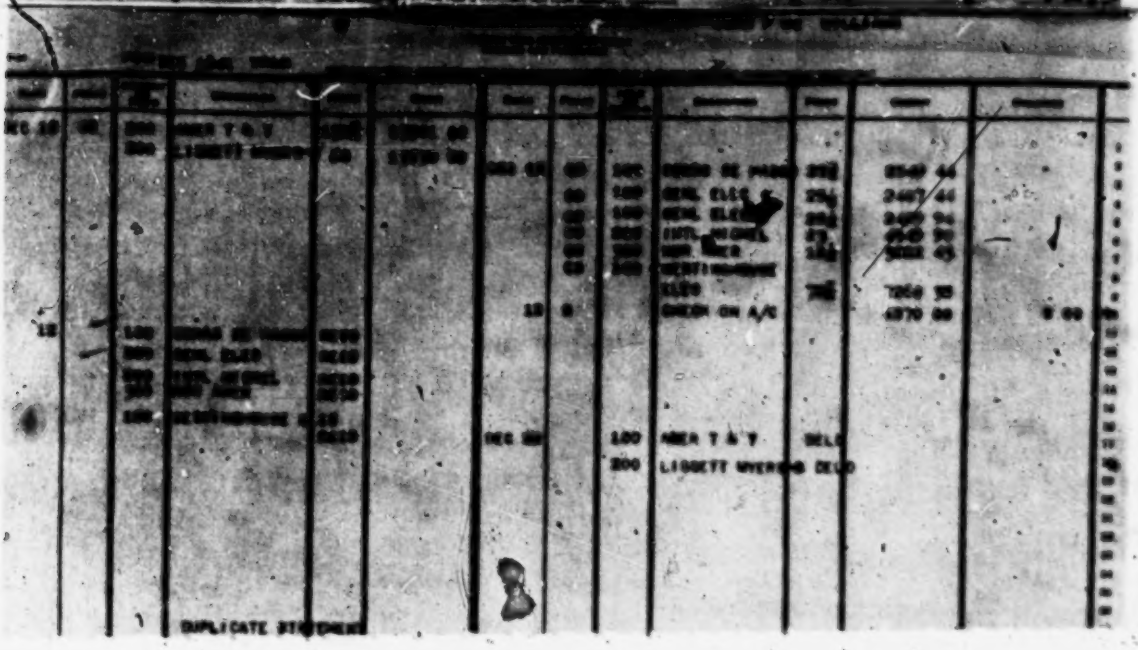
DATE	FOLIO	AMOUNT OF SALE	DESCRIPTION	PRICE	DEBIT	DATE	FOLIO	AMOUNT OF SALE	DESCRIPTION	PRICE	CREDIT	BALANCE
NOV 9		10M	YDS S & T 5½8/11/1/60 A/C PURCH AT 103	RECD								
9	J		A/C 10M YDS S & T 5½8/60 -D-									
			BOUGHT AT 103		10307 22							
9	CT		CHECK ON A/C		129 45							
					0	NOV 9		10M	YDS S & T 48/51-8 A/C REDEMP	DEL		
						9	R		CHECK ON A/C REDEMP OF 10M YDS S & T 48/51		10456 67	0 00
						NOV 12		10M	YDS S & T 1ST MTGE 5½8/60-D	DELD		
NOV 29	CD	200	GENL ELEC	32½	6582 00							
	CD	100	GENL ELEC	32⅞	3278 50							
	CD	200	INTER NICKEL	25¼	5080 00							
	CD	100	SO OF N J	34⅛	3441 25	NOV 29	R		CHECK ON A/C		18561 75	
						30	R		CHECK ON A/C		14077 25	
NOV 30			BALANCE	LONG		NOV 30			BALANCE		14077 25	
		300	GENL ELEC									
		200	INTER NICKEL									
		100	SO OF N J									
			DUPLICATE STATEMENT									



IN ACCOUNT WITH CURTISS, HOUSE & CO.

FOR JUL 1941 YEAR

DATE	FOLIO	QUANTITY	DESCRIPTION	ITEMS	DEBIT	DATE	FOLIO	QUANTITY	DESCRIPTION	ITEMS	CREDIT	BALANCE
JUL 5		300	INTL NICKEL	RECD								
		300	NOR AMER CO	RECD								
		100	MONSANTO CHEM	RECD								
		300	PARKE DAVIS	RECD								
		200	INTL NICKEL	RECD								
		500	GENL ELEC	RECD								
		200	EASTMAN KODAK	RECD		JUL 7	CD	10	DET EDISON		194 [illegible]	
8		100	DUPONT	548	18584 50							
		200	GENL MOTOR	578	7592 00							
		100	LIBBY OWENS FORD	28	2827 50							
		100	LIBBY OWENS FORD	28	2815 00							
		100	LIBBY OWENS FORD	28	2852 50	JUL 8	CD	100	EASTMAN KODAK	1385	15000 75	
								100	EASTMAN KODAK	1385	15391 85	
								300	GENL ELEC	2[illegible]	9997 50	
								200	GENL ELEC	2[illegible]	6688 67	
								200	INTL NICKEL	2[illegible]	4199 00	
								200	INTL NICKEL	2[illegible]	7804 00	
								100	INTL NICKEL	2[illegible]	3899 94	
								100	MONSANTO CHEM	2[illegible]	4874 93	
								300	NOR AMER CO	2[illegible]	9564 78	
								300	PARKE DAVIS	2[illegible]	5481 00	
								100	PARKE DAVIS	2[illegible]	3749 94	
						7	CD		TAX TO J P MC WILLIAMS EXEC A/C		[illegible] 22	
JUL 8	CK		CHECK ON A/C		64355 07							
	CK		CHECK ON A/C		10164 53							
						JUL 8	R		CHECK ON A/C		38981 39	0 00
11	CD	100	BASIC REFRACT	7½	736 25							
14	CD	200	BASIC REFRACT	7½	1472 25							
16	CD	200	BASIC REFRACT	7½	1522 00							
	CD	200	BASIC REFRACT	7½	1497 25							
	CD	100	BASIC REFRACT	7½	761 00	JUL 17		200	GENL MOTORS	DELI		
								100	DUPONT	DELI		
								300	LIBBY OWENS FORD GLASS	DELI		
						18	R		CHK ON ON A/C			
24	CD	100	BASIC REFRACT	7½	761 25				800 BASIC REFRACT		3048 75	
	CD	100	BASIC REFRACT	7½	775 50	24	R		CHECK ON A/C		1924 75	



DATE	FOLIO	QUANTITY	DESCRIPTION	ITEMS	DEBIT	DATE	FOLIO	QUANTITY	DESCRIPTION	ITEMS	CREDIT	BALANCE
DEC 10		200	AMER T & T	DELI	[illegible] 00							
		200	LIGGETT MYERS CO	DELI	[illegible] 00							
						DEC 10	CD	100	[illegible]	2[illegible]	8549 44	
								100	GENL ELEC	2[illegible]	2467 44	
								100	GENL ELEC	2[illegible]	2[illegible]	
								200	INTL NICKEL	2[illegible]	2[illegible]	
								200	NOR AMER	2[illegible]	2[illegible]	
								100	[illegible]	2[illegible]	7250 00	
						10	R		CHECK ON A/C		4870 00	0 00
12		100	[illegible]	DELI								
		200	GENL ELEC	DELI								
		200	INTL NICKEL	DELI								
		200	NOR AMER	DELI								
		200	[illegible]	DELI								
						DEC 12		100	AMER T & T	DELI		
								200	LIGGETT MYERS CO	DELI		

DUPLICATE STATEMENT

Joint Exhibit No. B-2

26

Joint Exhibit No. B

27

IN ACCOUNT WITH CURTISS, HOUSE & CO.

MRS BROOKS S MC WILLIAMS

FOR NOV 1948 YEAR

DATE	QUANTITY	SECURITIES	PRICE	DEBIT	DATE	POSTED	QUANTITY DELIVERED	DESCRIPTION	PRICE	CREDIT	BALANCE
		BALANCE	LONG								0
	10M	YOS S & T 45/61									
	500	YOS STEEL DOOR									
					NOV 1	CD	100	YOS STEEL DOOR	20¼	1999 98	
						CD	200	YOS STEEL DOOR	20¼	3999 66	
					6	CD	200	YOS STEEL DOOR	20¼	3999 66	
		CHECK ON A/C		3999 27	NOV 12	CD	100	YOS STEEL DOOR	20¼	1999 70	
						CD	100	YOS STEEL DOOR	20¼	1999 95	
						CD	100	YOS STEEL DOOR	20¼	2024 98	
						CD	100	YOS STEEL DOOR	20¼	2024 98	
	10M	YOS S A T 5½/1/1/60									
		A/C PURCH AT 103									
			RECD								
		A/C 10M YOS S & T 5½/60-0 AT 103		10307 22							
	500	YOS STEEL DOOR	RECD								
		CHECK ON A/C		129 45	NOV 9		10M	YOS S & T 48/61			
								CHECK ON A/C	DELD		
								REDEMP OF 10M YOS S & T 48/61		10436 67	
					13	CD	200	YOS STEEL DOOR	20½	4099 91	
						CD	100	YOS STEEL DOOR	20½	2049 70	
		CHECK ON A/C									0 00
	500	YOS STEEL DOOR		14147 16							
					NOV 12		10M	YOS S & T 1st MTGE 5½/60-0	DELD		
					29	CD	200	GENL ELEC	32½	6497 61	
						CD	100	GENL ELEC	32⅝	3236 43	
						CD	200	INTL NICKEL	25¼	4999 89	
						CD	100	SO OF N J	34¼	3403 43	
	10M	DOM OF CANADA									
	10M	NICKEL PLATE									
			RECD								
	200	INTL NICKEL	RECD								
	100	SO OF N J	RECD								
		GENL ELEC	RECD								
		CHECK ON A/C									
		200 GENL ELEC									
		100 SO OF N J									
	200	INTL NICKEL		10157 32							

MRS BROOKS S MC WILLIAMS

IN ACCOUNT WITH CURTISS, HOUSE & CO.

FOR NOV 1948 YEAR

NO 2

DATE	QUANTITY	SECURITIES	PRICE	DEBIT	DATE	POSTED	QUANTITY DELIVERED	DESCRIPTION	PRICE	CREDIT	BALANCE
NOV 30		BALANCE	LONG								
	10M	DOM OF CANADA 5½/67									
	10M	NICKEL PLATE 4½/65									
	500	YOS STEEL DOOR									
		DUPLICATE STATEMENT									

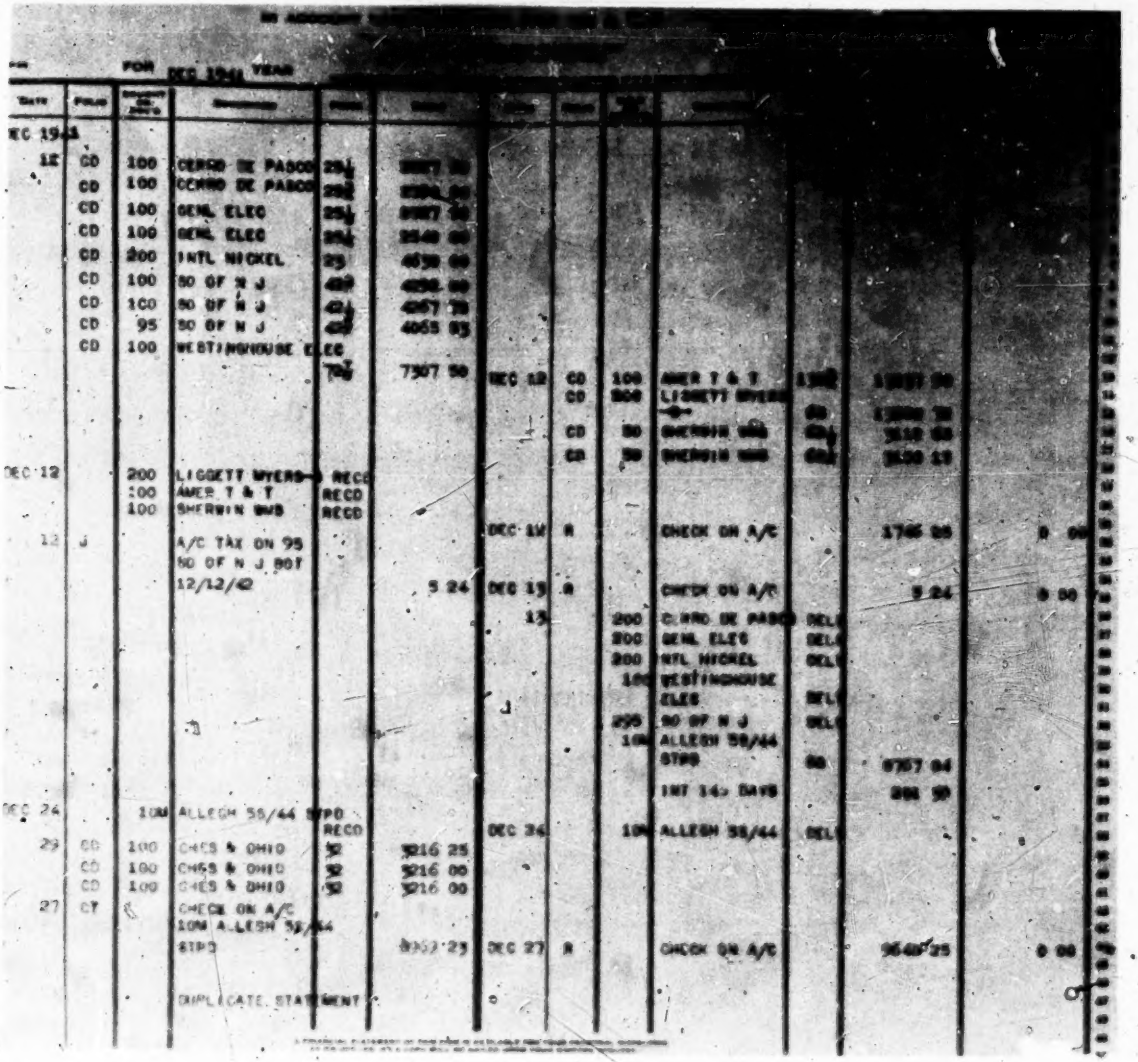
IN ACCOUNT WITH CURTISS, HOUSE & CO.

MRS BROOKS & MC WILLIAMS

DATE	PAGE	QUANTITY BOUGHT	DESCRIPTION	PRICE	DEBIT	DATE	FOLIO	QUANTITY DELIVERED	DESCRIPTION	PRICE	
DEC 31	19-20		BALANCE	LONG							
		500	YOS STEEL DOOR								
JUL 5	1948	300	LIBBEY OWENS FORD GLASS	RECD							
		800	GENL MOTOR	RECD							
		100	DUPONT	RECD							
		1000	BASIC REFRACT	RECD							
						JUL 7	CD	100	YOS STEEL DOOR	16¼	
							CD	200	YOS STEEL DOOR	16¼	
JUL 8	CD	100	EASTMAN KODAK	135¼	13531 00						
		100	EASTMAN KODAK	135⅜	13563 50						
		300	GENL ELEC	32½	9726 00						
		200	GENL ELEC	32⅝	6507 00						
		100	INTL NICKEL	26¼	2640 00						
		200	INTL NICKEL	26¼	5280 00						
		200	INTL NICKEL	26½	5305 00						
		100	MONSANTO CHEM	83	8321 00	JUL 8	CD	100	DUPONT	144½	
								200	GENL MOTORS	99½	
								100	LIBBY OWENS FORD GLASS	29⅞	
								100	LIBBY OWENS FORD GLASS	29⅝	
								100	LIBBY OWENS FORD GLASS	29	
						JUL 7	R		CHECK ON A/C		
JUL 8	CK		CHECK ON A/C		31323 45						
	CK		CHECK ON A/C								
			500 YOS STEEL DOOR		4808 64	JUL 11	CD	100	BASIC REFRACT	7¼	
						14	CD	200	BASIC REFRACT	7¼	
						15	CD	200	BASIC REFRACT	7⅛	
						16	CD	200	BASIC REFRACT	7⅛	
							CD	100	BASIC REFRACT	7⅛	
						17		500	INTL NICKEL	DEL'D	
								100	MONSANTO CHEM	DEL'D	
								200	EASTMAN KODAK	DEL'D	
								500	GENL ELEC	DEL'D	
JUL 18	CT		CHECK FOR A/C								
			800 BASIC REFRACT		5786 72	24	CD	100	BASIC REFRACT	7¼	
							CD	100	BASIC REFRACT	7⅛	
24	WC		CHECK FOR A/C								
			200 BASIC REFRACT		1484 11						

Joint Exhibit No. C-3

30



FOR DEC 1941 YEAR

DATE	FOLIO	QUANTITY	DESCRIPTION	FOLIO	AMOUNT	DATE	CODE	QUANTITY	DESCRIPTION	CODE	AMOUNT	
DEC 1941												
11	CD	100	CERRO DE PASCO	25½	3987 50							
	CD	100	CERRO DE PASCO	25½	3987 50							
	CD	100	GENL ELEC	25½	3987 50							
	CD	100	GENL ELEC	25½	3540 00							
	CD	200	INTL NICKEL	23	4650 00							
	CD	100	SO OF N J	42½	4250 00							
	CD	100	SO OF N J	42½	4257 75							
	CD	95	SO OF N J	42½	4065 63							
	CD	100	WESTINGHOUSE ELEC	74½	7307 50	DEC 12	CD	100	AMER T & T	[illegible]	[illegible]	
							CD	200	LIGGETT MYERS	[illegible]	[illegible]	
							CD	50	SHERWIN WMS	[illegible]	[illegible]	
							CD	50	SHERWIN WMS	[illegible]	[illegible]	
DEC 12		200	LIGGETT MYERS	RECD								
		100	AMER T & T	RECD								
		100	SHERWIN WMS	RECD								
						DEC 12	R		CHECK ON A/C		1746 88	R 00
12	J		A/C TAX ON 95 SO OF N J DIST 12/12/42		5 24	DEC 13	R		CHECK ON A/C		5 24	R 00
						13		200	CERRO DE PASCO	DEL		
								200	GENL ELEC	DEL		
								200	INTL NICKEL	DEL		
								100	WESTINGHOUSE ELEC	DEL		
						J		295	SO OF N J	DEL		
								100	ALLEGH 55/44 STPD			
										RD	9757 84	
									INT 14> DAYS		284 90	
DEC 24		100	ALLEGH 55/44 STPD	RECD		DEC 24		100	ALLEGH 55/44	DEL		
29	CD	100	CHES & OHIO	52	5216 25							
	CD	100	CHES & OHIO	52	5216 00							
	CD	100	CHES & OHIO	52	5216 00							
27	CT		CHECK ON A/C 100 ALLEGH 55/44 STPD		9362 25	DEC 27	R		CHECK ON A/C		9362 25	R 00
			DUPLICATE STATEMENT									

JOINT EXHIBIT No. D-4

UNITED STATES NOT INVESTIGATED

INDIVIDUAL INCOME AND DEFENSE TAX RETURN 1940

FOR GROSS INCOMES OF MORE THAN $5,000 FROM SALARIES, WAGES, DIVIDENDS, INTEREST, ANNUITIES, AND FOR INCOMES FROM OTHER SOURCES, REGARDLESS OF AMOUNTS

For Calendar Year 1940

or fiscal year beginning 1-1-40, 1940, and ended 12-31-40, 1940

(To be filed with the Collector of Internal Revenue for your district not later than the 15th day of the third month following the close of your taxable year)

PRINT NAME AND ADDRESS PLAINLY. (Give husband's name first)

McWilliams, John P.

820 The Arcade

Cleveland Cuyahoga Ohio

(Do not use these spaces)

No. 1936

Serial No. 200268

District 18-Ohio

(Collector's Stamp)

Cash Check M.O.

Page 1

INCOME		
1. Salaries and other personal service. (Show Schedule A)	$ 21,500 00	
2. Dividends	29,856 50	
3. Interest on bonds, notes, mortgages, etc.	42 00	
4. Interest on deposits in banks, etc.		
5. Taxable interest on Government obligations, etc. (Show Schedule B)		
6. Income (or loss) from partnerships, syndicates, pools, etc. (other than capital gains or losses). (Show Schedule C)		
7. Income from fiduciaries. (Show name and address)		
8. Rents and royalties. (Show Schedule D)		
9. Income (or loss) from business or profession. (Show Schedule E)		
10. (a) Net short-term gain from sale or exchange of capital assets. (Show Schedule F) 46.05		
(b) Net long-term gain (or loss) from sale or exchange of capital assets. (Show Schedule F)	482 02	
(c) Net gain (or loss) from sale or exchange of property other than capital assets. (Show Schedule G)		
11. Other income (including income from annuities). (Show part to which taxable)		
12. Total income in items 1 to 11. (Show amounts taxable in Schedule H)		$ 70,723 48
DEDUCTIONS		
13. Contributions paid. (Explain in Schedule H)	$ 2,051 00	
14. Interest. (Explain in Schedule H)		
15. Taxes. (Explain in Schedule H)	4,032 24	
16. Losses from fire, storm, shipwreck, or other casualty, or theft. (Explain in Schedule H)		
17. Bad debts. (Explain in Schedule H)		
18. Other deductions authorized by law. (Explain in Schedule H) Safety deposit box	30 00	
19. Total deductions in items 13 to 18.		6,114 24
20. Net income (item 12 minus item 19)		$ 64,609 24

COMPUTATION OF TAX

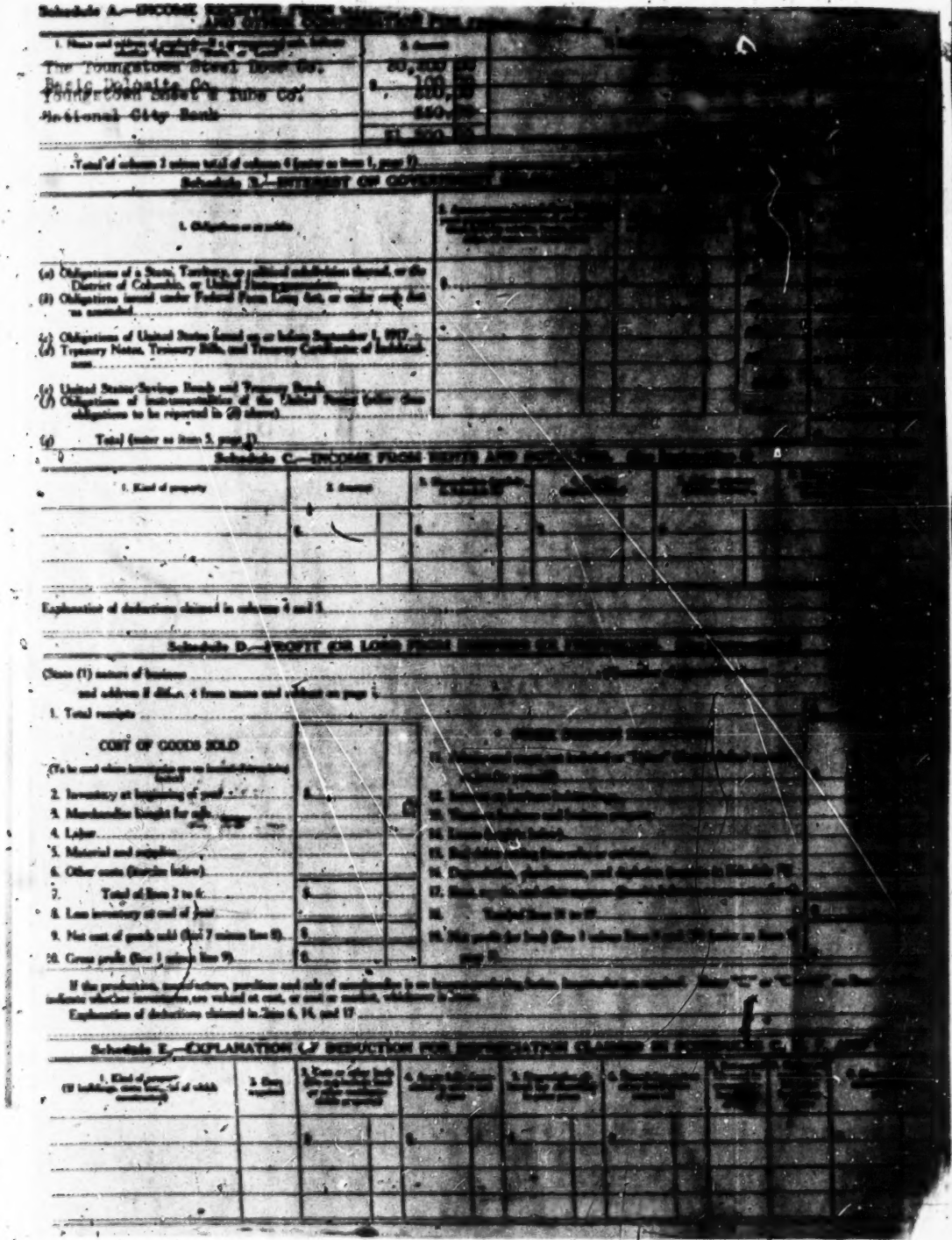
21. Net income (item 20 above)		$ 64,609 24	26. Normal tax (4% of item 21)	$ 2,584 37
22. Less: Personal exemption	$ 2,000 00		27. Surtax on item 24. (See instruction 26)	16,764 01
23. Credit for dependents	1,200 00		28. Total (item 25 plus item 26)	$ 19,348 38
24.		3,200 00	29. Total income (item 21, or if you had a net long-term capital gain or loss, enter item 21 of Schedule F)	$ 19,348 38
25. Balance (item 21 minus item 24)		$ 61,409 24	30. Less: Income tax paid at source (Explain in Schedule K)	$ 57 80
			31. Income tax paid to a foreign country or U.S. possession (Explain in Schedule K)	
			32. Balance of income tax (item 28 minus item 30 and 31)	$ 19,290 58
			33. Defense tax (10% of item 29) (See instruction 27)	1,934 80
			34. Total income and defense taxes due	

SCHEDULE F.

GAINS AND LOSSES FROM SALE OR EXCHANGE OF CAPITAL ASSETS

Description	Date Acquired	Date Sold	Gross Sales Price	Cost	Expense of Sale	Gain or Loss	Percent	Gain or Loss
LONG TERM CAPITAL GAINS AND LOSSES - ASSETS HELD MORE THAN 18 MONTHS								
1-M Anaconda Copper	12-17-39	8-7-40	1,020.00	1,067.50	-	47.50	100	47.50
10-Units Washington Elec.	12-20-39	1-6-40	191.42	186.25	-	5.18	100	5.18
5-Units Washington Elec.	12-1-39	10-8-40	91.67	89.96	-	1.71	100	1.71
								54.39
LONG TERM CAPITAL GAINS AND LOSSES - ASSETS HELD MORE THAN 18 BUT NOT MORE THAN 24 MONTHS								
8-M Anaconda Copper	7-10-39	8-7-40	8,170.00	8,460.96	-	290.96	66-2/3	193.97
100-Sherwin Williams Pfd.	11/4-12/27 1926	9-4-40	10,870.28	11,[illegible]2.15	10.00	408.87	66-2/3	271.25
								465.22
LONG TERM CAPITAL GAINS AND LOSSES - ASSETS HELD FOR MORE THAN 24 MONTHS								
10-M Youngs. S & T[illegible]61	1-28-27	11-2-40	13,[illegible]00.00	13,[illegible]11.60	-	[illegible]	[illegible]	78.60

Joint Exhibit No. D-4



Schedule A—INCOME RECEIVED FROM

1. Name and address of payer	2. Amount
The Youngstown Sheet Door Co.	50,000
Basic Dolomite Co.	100
Youngstown Sheet & Tube Co.	200
National City Bank	650
	$1,000

Total of column 2 enter total of column 4 (enter as item 1, page 1)

Schedule B—INTEREST ON GOVERNMENT

1. Obligations on which	2. Amount
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United [illegible]	$
(b) Obligations issued under Federal Farm Loan Act, or under such Act as amended	
(c) Obligations of United States issued on or before September 1, 1917	
(d) Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness	
(e) United States Savings Bonds and Treasury Bonds	
(f) Obligations of instrumentalities of the United States (other than obligations to be reported in (b) above)	
(g) Total (enter as item 5, page 1)	

Schedule C—INCOME FROM RENTS AND ROYALTIES

1. Kind of property	2. Amount	3. [illegible]	[illegible]	[illegible]
	$	$	$	$

Explanation of deductions claimed in columns 4 and 5

Schedule D—PROFIT OR LOSS FROM [illegible]

Class (1) nature of business

and address if different from name and address on page 1

1. Total receipts

COST OF GOODS SOLD		
(To be used where inventories are an income-determining factor)		
2. Inventory at beginning of year	$	
3. Merchandise bought for sale		
4. Labor		
5. Material and supplies		
6. Other costs (Explain below)		
7. Total of lines 2 to 6	$	
8. Less inventory at end of year		
9. Net cost of goods sold (line 7 minus line 8)	$	
10. Gross profit (line 1 minus line 9)	$	

OTHER CURRENT DEDUCTIONS	
11. Advertising (not included in "other" deductions)	
12. Bad debts arising from sales or services	
13. Contributions	
14. Losses (other than)	
15. Repairs	
16. Depreciation, depletion, and obsolescence (explain in schedule H)	
17. Rent on [illegible] and other business property	
18. Taxes (other than [illegible])	
19. Total (lines 11 to 18)	
20. Net profit (or loss) (line 1 minus [illegible] line 19) (enter as item 6, page 1)	

If the production, manufacture, purchase and sale of merchandise is an income-determining factor, inventories are required. Show "Cost" or "Lower of cost or market" as basis unless other acceptable method was used. Give details as to method used, valuation of inventories

Explanation of deductions claimed in lines 6, 14, and 17

Schedule E—EXPLANATION OF DEDUCTION FOR [illegible] CLAIMED IN [illegible]

1. Kind of property (If additional space is required, attach schedule)	2. Date acquired	3. Cost or other basis as adjusted as of beginning of year	4. Depreciation allowed or allowable in prior years	5. Depreciation allowed or allowable for year	6. Depreciation sustained	7. [illegible]	8. [illegible]
		$	$	$	$		

Joint Exhibit No. D-4

SHORT-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD NOT MORE THAN 18 MONTHS

SEE SCHEDULE

LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 18 MONTHS BUT NOT FOR MORE THAN 24 MONTHS

SEE SCHEDULE

LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 24 MONTHS

SEE SCHEDULE

SUMMARY OF CAPITAL NET GAINS OR LOSSES

1. Classification	2. Net short-term capital gain or loss (enter on line 10 (a), page 1, amount of gain shown in column 3)	3. Net gain or loss (as for long-term amounts from column 10, above)		4. Net gain or loss (as for long-term amounts from column 11, above)		5. Total net gain or loss (as for either amounts in columns 3, 4, and 5 of this summary)	
		Gain	Loss	Gain	Loss	Gain	Loss
1. Total net short-term capital gain or loss (enter on line 10 (a), page 1, amount of gain shown in column 3)	$	$	$ 46 00	$	$	$	$
2. Total net long-term capital gain or loss (enter on line 10 (b), page 1, amount of gain or loss shown in column 3)	$	$	$ 60 00	$	$	$	$ 106 00

COMPUTATION OF ALTERNATIVE TAX

Use only (1) If you had a net long-term capital gain, and item 34, page 1, exceeds $22,000
(2) If you had a net long-term capital loss, and such loss plus item 34, page 1, exceeds $22,000

1. Net income (from 28, page 1). (See Instruction 19)		$ 64,809	24	10. Normal tax (4% of line 9)	$ 2,412
2. (a) Net long-term capital gain (from 10 (b), page 1)		46	00	11. Surtax on line 6. (See Instruction 20)	16,232
(b) Net long-term capital loss (from 10 (b), page 1)				12. Partial tax (line 40 plus line 11)	$ 18,428
3. Ordinary net income (line 1 minus line 2 (a) or line 1 plus line 2 (b)). (See Instruction 19)		$ 65,091	24	13. (a) 30% of net long-term capital gain (30% of line 2 (a))	
4. Less: Personal exemptions. (From Schedule J-1)	$ 2000 00			(b) 30% of net long-term capital loss (30% of line 2 (b))	144
5. Credit for dependents. (From Schedule J-2)	1266 67	3,266	67	14. Alternative tax (line 12 plus line 13 (a) or line 12 minus line 13 (b))	$ 18,556
6. Balance (Surtax net income)		$ 61,824	57	15. Total normal tax and surtax (from 38, page 1)	$ 18,157
7. Less: Interest on Government obligations, if any. (See Instruction 21)	$			16. Tax liability (if a net long-term capital gain on line 2 (a), enter line 14 or line 15, whichever is the lesser; if a net long-term capital loss, on line 2 (b), enter line 14 or line 15, whichever is the greater). (Enter as item 39, page 1)	$ 18,218
8. Earned income credit. (From Schedule K-1 or K-2). (See Inst. 19)	1400 00	1,400	00		
9. Balance subject to normal tax		$ 60,424	57		

Schedule G.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS
(See Instruction 19)

1. Kind of property	2. Date acquired	3. Gross sales price (contract price)	4. Cost or other basis	5. Expenses of sale and cost of improvements (explain on sheet) (see Inst. 5 (b), 1957 Return)	6. Depreciation allowable (see Inst. 5 (b), 1957 Return) or Method 2, 1957 return (explain in Schedule H)	7. Gain or loss (subtract 5 plus 6 from 3 and 4)
		$	$	$	$	$
Total net gain (or loss) (enter as item 38 (a), page 1)						$

State the family, fiduciary, or business relationship in case of any of parents ____ of any of the items on this page ____
If any of such items were acquired by gift, bequest, devise, or inheritance, explain ____ date acquired ____

Joint Exhibit No: D-4

Schedule H.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 14, 15, 16, 17, 18, AND 19

1. Item No.	2. Deductions	3. Amount	1. Item No.	2. Deductions	3. Amount
14	Church Tithe	$	14		$ 1,0
	[illegible] Art				1,0
	University School				
	Eastern Agency				
	[illegible]				
	[illegible]				
	Society for Aid of Hiring				
	[illegible]				

Schedule I.—EXPLANATION OF INCOME (OTHER THAN [illegible]) RECEIVED DURING THE TAXABLE YEAR. (See Instruction 9)

1. Source of Income	2. Nature of Business	3. Amount
		$

Schedule J.—EXPLANATION OF CREDITS CLAIMED IN ITEMS 18 AND 19. (See Instructions 18 and 19)

(a) Personal Exemption

Status	Number of persons in family, same to each entry	Credit claimed
Single, or married and not living with husband or wife		$
Married and living with husband or wife		
Head of family (explain below)		

(b) Credit for Dependents

Name of dependent and relationship	Number of months under which [illegible]		Credit claimed
	[illegible]	[illegible]	$

Reason for support if over 18 years old

Schedule K.—COMPUTATION OF EARNED INCOME CREDIT. (See Instruction 20)

(1) If your net income is $14,000 or less, use only this part of schedule.

Net income (item 20, page 1)	$
Earned income credit (10% of net income, above)	

(2) If your net income is more than $14,000, use only this part of schedule.

Earned net income (not more than $14,000)	$ 14,000 00
Net income (item 20, page 1)	14,000 14
Earned income credit (10% of earned net income or 10% of net income, above, whichever amount is smaller, but do not enter less than $100)	1,400 00

QUESTIONS

1. State your principal occupation or profession Executive
2. Check whether you are a citizen ☑ or a resident alien ☐.
3. Did you file a return for any prior year? Yes. If so, what was the latest year? 1939. To which Collector's office was it sent? Cleveland.
4. Are items of income or deductions of both husband and wife included in this return? No
5. State (a) Name of husband or wife whose separate return was made, [illegible] H. Williams
   (b) Personal exemption, if any, claimed thereon none
   (c) Collector's office to which it was sent Cleveland
6. Check whether this return was prepared on the cash ☑ or accrual ☐ basis.
7. Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company as defined by section 501 of the Internal Revenue Code? (Answer "yes" or "no") Yes (If answer is "yes," attach statement required by Instruction 7.)

AFFIDAVIT. (See Instruction 8)

I/we swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me/us, and to the best of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and the regulations issued under authority thereof.

Subscribed and sworn to by [illegible] H. Williams

before me this 14th day of March, 1941

Merle McNeil
(Signature and title of officer administering oath)

A return made by an agent must be accompanied by power of attorney. (See Instruction 8.)

MERLE McNEIL, Notary Public

My commission expires June 11, 1941

[illegible] H. Williams
(Signature)

(If this is a joint return (not made by agent), it must be signed by both husband and wife. It must be sworn to before a proper officer by the spouse preparing the return. If neither or both prepare the return, it must be sworn to by both spouses.)

AFFIDAVIT. (See Instruction 8)

(If this return was prepared for you by some other person, the following affidavit must be executed)

I/we swear (or affirm) that I/we prepared this return for the person or persons named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the tax liability of the person or persons for whom this return has been prepared of which I/we have any knowledge.

Subscribed and sworn to before me this 14th day of March, 1941

Merle McNeil
(Signature and title of officer administering oath)

MERLE McNEIL, Notary Public

My commission expires June 11, 1941

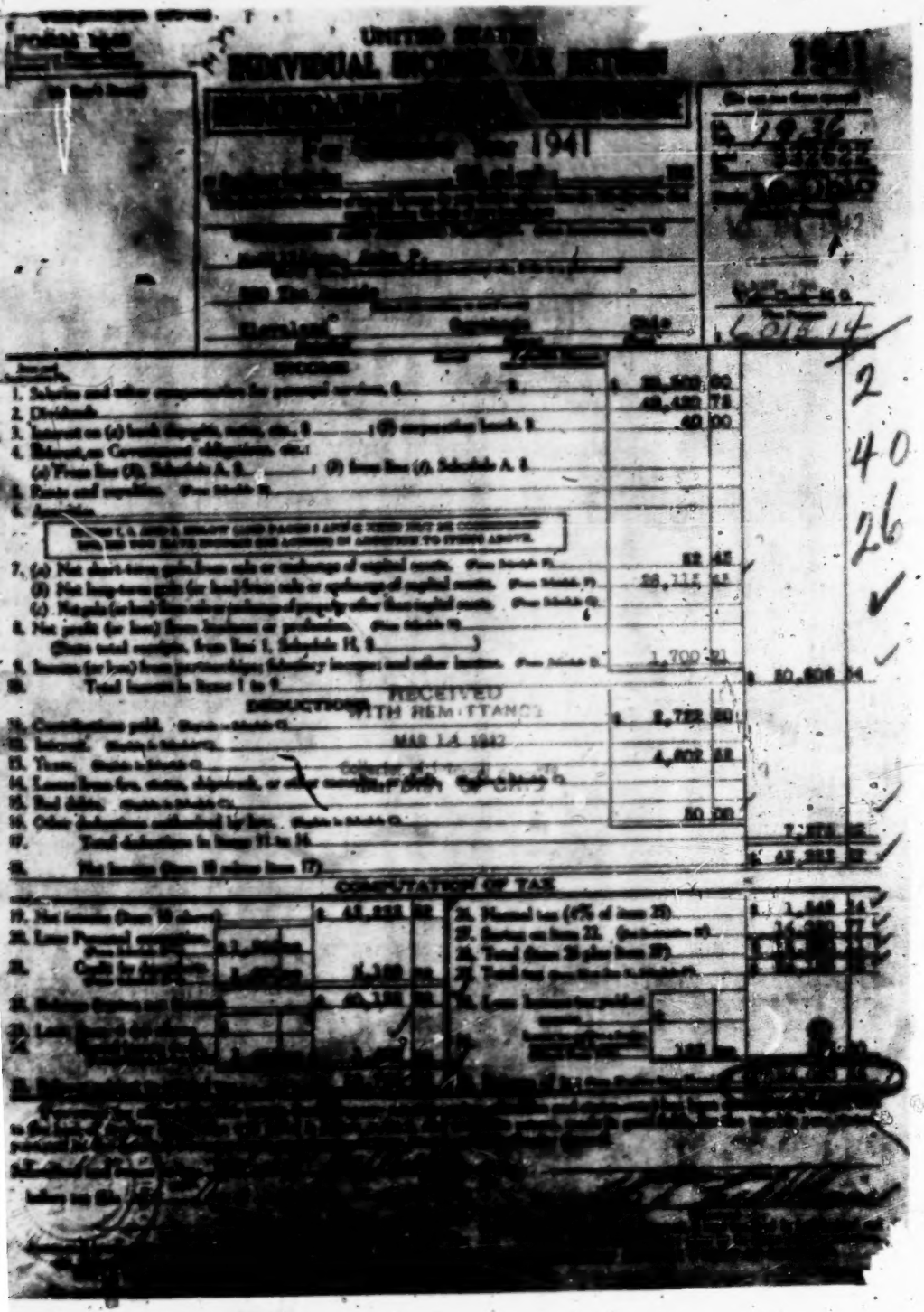
[illegible] L. Hall
(Signature of person preparing the return)

Secy

(Signature of person preparing the return)

(Office or business address)

JOINT EXHIBIT No. E-5


UNITED STATES

INDIVIDUAL INCOME TAX RETURN

1941

For Calendar Year 1941

INCOME

DEDUCTIONS

RECEIVED WITH REMITTANCE

MAR 14 1942

COMPUTATION OF TAX

Joint Exhibit No. E-5

Schedule A.—INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See Instruction G)

1. Obligations or securities	2. Amount owned at end of year (including your proportionate share of such obligations held by estates, trusts, partnerships, clubs, or associations from which received)	3. Interest received or accrued during the year	4. Amount of principal on which interest is to be included in gross income	5. Interest on amounts in column 4, and dividends only, paid for current year
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions	$	$	All	
(b) Obligations issued prior to March 1, 1941, under Federal Farm Loan Act, or under such Act as amended			All	
(c) Obligations of United States issued on or before September 1, 1917			All	
(d) Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness issued prior to March 1, 1941			All	
(e) United States Savings Bonds and Treasury Bonds issued prior to March 1, 1941			$5,000	$
(f) Obligations of instrumentalities of the United States (other than obligations to be reported in (g) below) issued prior to March 1, 1941			None	
(g) Dividends on shares accounts in Federal savings and loan associations				
(h) Total (enter on line 4 (a), page 1)				$

(i) Obligations issued on or after March 1, 1941, by the United States or any agency or instrumentality thereof (enter amount of interest as item 4 (i), page 1)	Amount owned at end of year	Interest received or accrued during the year (subject to ordinary tax only on receipt)
	$	$

Schedule B.—INCOME FROM RENTS AND ROYALTIES. (See Instruction E)

1. Kind of property	2. Amount	3. Depreciation or depletion (attach schedule)	4. Repairs (explain below)	5. Other expenses (itemize below)	6. Net profit (subtract 3, 4, and 5 from 2) (enter on line 5, page 1)
	$	$	$	$	$

Explanation of deductions claimed in columns 4 and 5

Schedule C.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 11, 12, 13, 14, 15, AND 16

1. Item No.	2. Explanation	3. Amount	1. Item No. (Continued)	2. Explanation (Continued)	3. Amount (Continued)
		$			$
	See schedule attached			See schedule attached	

Schedule D.—EXPLANATION OF CREDITS CLAIMED IN ITEMS 20 AND 21. (See Instructions 20 and 21)

(1) Personal Exemptions

Status	Number of months during the year in such status	Credit claimed
Single, or married and not living with husband or wife, and not head of family		$
Married and living with husband or wife	12	1,500 00
Head of family (explain below)		

(2) Credit for Dependents

Name of dependent and relationship	Number of months during the year: Under 19 years old	19 years or over	Credit claimed
Barlow son	12		$ 400 00
Suzanne daughter	12		400 00
Marianne daughter	12		400 00
John, Jr. son	12		400 00

Reason for support if 19 years or over

Schedule E.—COMPUTATION OF EARNED INCOME CREDIT. (See Instruction 26)

(1) If your net income is $5,000 or less, use only this part of schedule

Net income (item 18, page 1)	$	
Earned income credit (10% of net income, above)		

(2) If your net income is more than $5,000, use only this part of schedule

Earned net income (not more than $14,800)	$	14,000 --
Net income (item 18, page 1)		45,258 58
Earned income credit (10% of earned net income or 10% of net income, above, whichever amount is smaller, but do not enter less than $300)		1,400 --

QUESTIONS

1. State your principal occupation or profession: Executive
2. Name and address of employer: The Youngstown Sheet Door Co., 590 The Arcade, Cleveland, O.
3. Did you file a return for any prior year? Yes If so, what was the latest year? 1950 To which Collector's office was it sent? Cleveland
4. If separate returns were made for the current year, state: (a) Name of husband or wife: Brooks B. McWilliams (b) Principal occupation, if any, claimed therein: None (c) Collector's office to which it was sent: Cleveland
5. Check whether this return was prepared on the cash ☑ or accrual ☐ basis.
6. If return on cash basis, do you elect, under section 42, to include as income received in the current year the increase for accrued and prior years in the redemption price of accumulation-type obligations issued at a discount? ____ If so, attach statement listing obligations covered and computation of the accrued income. Report such increase as interest in item 3 or 4, page 1, whichever applicable.
7. Did you receive during the taxable year any nontaxable income other than interest reported in Schedule A (see Instruction G)? No If so, attach schedule showing source, nature, and amount of such income.
8. Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company as defined by section 501 of the Internal Revenue Code? Yes If so, attach statement required by Instruction J.

Joint Exhibit No. E-5

DETACH PAGES 3 AND 4 IF NOT USED

Page 3

Schedule F.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS. (See Instructions 7).

1. Kind of property (If necessary, attach separate sheet with same heading)	2. Date acquired (Mo. Day Year)	3. Date sold (Mo. Day Year)	4. Gross sales price (Enter also on page 1)	5. Cost or other basis	6. Expense of sale and cost of improvements (Enter also on page 1, Part I, line 2)	7. Depreciation allowed (or allowable) since acquisition (Enter also on page 1, 1951 Column B, Schedule B)	8. Sales or base (subtract col. 7 from col. 5 and col. 6)	Gains or loss to be taken into account: 9. Per cent	10. Amount
SHORT-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD NOT MORE THAN 18 MONTHS									
			$	$	$	$	$	100	$
								100	
								100	
				See schedule attached				100	
Total net short-term capital gain or loss (enter in line 1, column 3, of summary below)									$
LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 18 MONTHS BUT NOT FOR MORE THAN 24 MONTHS									
			$	$	$	$	$	66⅔%	$
								66⅔%	
								66⅔%	
				See schedule attached				66⅔%	
LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 24 MONTHS									
			$	$	$	$	$	50	
								50	
				See schedule attached				50	
								50	
Total net long-term capital gain or loss (enter in line 2, column 3, of summary below)									$

SUMMARY OF NET CAPITAL GAINS OR LOSSES

1. Classification	2. Net short-term capital loss (if applicable, enter gain in column 3 of next summary line)	3. Net gain or loss in the column below (amount from column 10, above)		4. Net gain or loss in the column below (amount from combined net short-term and long-term loss)		5. Total net gain or loss in the column below (column 3, 4, and 6 of this summary)	
		Gain	Loss	Gain	Loss	Gain	Loss
1. Total net short-term capital gain or loss (enter on line 7 (a), page 1, amount of gain shown in column 3)	$ 56	$ 99	$ 44	$	$ 9	$ 52	$ 85
2. Total net long-term capital gain or loss (enter on line 7 (b), page 1, amount of gain or loss shown in column 3)	$	$ 28,117	$ 57	$	$ 73	$	$ 26,117

COMPUTATION OF ALTERNATIVE TAX

Use only: If you had a net long-term capital gain, and item 22, page 1, exceeds $13,000, or
If you had a net long-term capital loss, and such loss plus items 22, page 1, exceeds $13,000

1. Net income (line 18, page 1). (See Instruction 7)	$48,273	10. Normal tax (4% of line 9)	$ 2,673
2. (a) Net long-term capital gain (item 7 (b), page 1)		11. Surtax on line 6. (See Instruction 17)	29,945
(b) Net long-term capital loss (item 7 (b), page 1)		12. Partial tax (line 10 plus line 11)	$32,618
3. Ordinary net income (line 1 minus line 2 (a) or line 1 plus line 2 (b)). (See Instruction 7)	$	13. (a) 50% of net long-term capital gain (50% of line 2 (a))	
4. Less: Personal exemption. (From Schedule D-1)	$1,500	(b) 50% of net long-term capital loss (50% of line 2 (b))	$
5. Credit for dependents. (From Schedule D-1)	1,000	14. Alternative tax (line 12 plus line 13 (a) or line 12 minus line 13 (b))	$24,186
6. Balance (subtract line 5 from line 4)	$	15. Total income tax and surtax (line 28, page 1)	$15,880
7. Less: (a) Earned income credit. (From Schedule D-1 or D-2). (See Inst. 7)	$	16. Tax on the basis of a net long-term capital gain, see line 2 (a), page 2 (if you have no net capital loss, enter tax on line 14 of this schedule; if you have a net capital loss, enter tax on line 14 or line 15, whichever is the smaller). (Enter on line 29, page 1)	$24,186
(b) Retirement income credit. (From Schedule D-2)	$		
8. Balance subject to normal tax	$		

Schedule G.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS. (See Instruction 7)

1. Kind of property	2. Date acquired	3. Gross sales price	4. Cost or other basis	5. Expense of sale and cost of improvements (Enter also on page 1, Part I, line 2)	6. Depreciation allowed (or allowable) since acquisition (Enter also on page 1, 1951 Column B, Schedule B)	7. Gain or loss (subtract col. 5 from col. 3 and add col. 6)
		$	$	$	$	$
Total net gain (or loss) (enter on line 7 (c), page 1)						$

Describe briefly, following, or insert on a separate sheet, if method of purchase of any of the items on this page [illegible]
If any of such items were acquired by gift, state how acquired [illegible]

Joint Exhibit No. E-5

Schedule H.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (See Instruction 8)

(State (1) nature of business _____ (2) number of places of business _____
and address if different from name and address on page 1. _____

1. Total receipts _____ $ _____

COST OF GOODS SOLD (To be used where inventories are an income-determining factor)			OTHER BUSINESS DEDUCTIONS	
2. Inventory at beginning of year	$		11. Salaries and wages not included as "Labor" (do not deduct amounts claimed for yourself)	$
3. Merchandise bought for sale			12. Interest on business indebtedness	
4. Labor			13. Taxes on business and business property	
5. Material and supplies			14. Losses (explain below)	
6. Other costs (Itemize below)			15. Bad debts arising from sales or services	
7. Total of lines 2 to 6	$		16. Depreciation, obsolescence, and depletion (explain in Schedule J)	
8. Less inventory at end of year			17. Rent, repairs, and other expenses (Itemize below or on separate sheet)	
9. Net cost of goods sold (line 7 minus line 8)	$		18. Total of lines 11 to 17	$
10. Gross profit (line 1 minus line 9)	$		19. Total of lines 9 and 18	$
			20. Net profit (or loss) (line 1 minus line 19) (entry as line 3, page 1)	$

If the production, manufacture, purchase, or sale of merchandise is an income-producing factor, inventories are required. Enter "C" or "C or M" on line 2 and 8 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.

Explanation of deductions claimed in lines 6, 14, and 17 _____

Schedule I.—INCOME FROM PARTNERSHIPS, FIDUCIARIES, AND OTHER SOURCES

INCOME (OR LOSS) FROM PARTNERSHIPS, SYNDICATES, ETC. (SEE INSTRUCTION 9 AND GIVE NAMES AND ADDRESSES)

Fort Dickinson, Clifton Forge, Virginia. (Farm)	$		
Owned jointly with John A. Haddan,			
1668 Union Commerce Bldg., Cleveland, Ohio.	1,700	21	$ 1,700 21

INCOME FROM FIDUCIARIES (GIVE NAMES AND ADDRESSES)

	$		

INCOME FROM OTHER SOURCES (STATE NATURE)

	$		

Total amounts in Schedule I. (Enter on line 9, page 1) $ 1,700 21

Schedule J.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES F, G, AND H

1. Kind of property (If buildings, state material of which constructed)	2. Date acquired	3. Cost or other basis (Do not include land or other nondepreciable items)	4. Amount fully depreciated prior to use in trade or business this year	5. Depreciation allowed or allowable in other years	6. Remaining cost or other basis to be recovered	7. Estimated life remaining from date of return	8. Estimated life remaining at beginning of year	9. Depreciation allowable this year
		$	$	$	$			$

AFFIDAVIT. (See Instruction 12)

(If this return was prepared for you by some other person, the following affidavit must be executed)

I/we swear (or affirm) that I/we prepared this return for the person or persons named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the tax liability of the person or persons for whom this return has been prepared of which I/we have any knowledge.

Subscribed and sworn to before me this 26th day of February, 1942.

Merle McNab
(Signature and title of officer administering oath)

Bruce L. Hall
(Signature of person preparing the return)

(Signature of person signing the return)

(Address of firm or employer, if any)

MERLE McNAB, Notary Public
My commission expires June 1 1944

SCHEDULE "D" GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS.

LONG-TERM CAPITAL GAINS AND LOSSES -- ASSETS HELD FOR MORE THAN SIX MONTHS AND NOT MORE THAN EIGHTEEN MONTHS.

Description	Date Acquired	Date Sold	Gross Sales Price	Cost	Expense of Sale	Gain or Loss	%	Gain or Loss
300 Intern.Nickel of Can.	10-25-39	7-8-41	7,829.85	12,201.00	30.00	[illegible]	-	[illegible]
200 Parke Davis	7-12-39	7-8-41	8,279.92	12,720.60	20.00	[illegible]	-	[illegible]
200 Eastman Kodak	9/20-10/25-39	7-8-41	26,809.38	32,107.50	20.00	[illegible]	-	[illegible]
500 General Electric	9/22-10/26-39	7-8-41	16,066.17	20,785.00	50.00	[illegible]	-	[illegible]
200 Intern. Nickel	9-22-39	7-8-41	8,244.89	7,762.25	20.00	[illegible]	-	[illegible]
100 Monsanto Chem.com.	10-17-39	7-8-41	8,278.85	10,698.25	4.60	[illegible]	-	[illegible]
200 North American	10-17-39	7-8-41	2,871.70	4,295.00	7.00	[illegible]	-	[illegible]

LONG TERM CAPITAL GAINS AND LOSSES -- ASSETS HELD FOR MORE THAN EIGHTEEN MONTHS

1-M Anaconda 4½% '50	7-18-38	8-11-41	1,010.00	1,057.82	-	[illegible]	[illegible]	[illegible]
100 Cerro dePasco	10-14-38	12-10-41	2,589.44	5,780.50	10.00	[illegible]	-	[illegible]
200 General Electric	10-14-38	12-10-41	8,007.78	9,784.90	20.00	[illegible]	-	[illegible]
200 Intern. Nickel	7 and 10'38	12-10-41	4,869.90	10,460.50	20.00	[illegible]	-	[illegible]
300 North American	9-15-37	12-10-41	8,022.93	8,687.71	10.50	[illegible]	-	[illegible]
100 Westinghouse E & M.	8-2-38	12-10-41	7,267.55	10,277.00	7.00	[illegible]	-	[illegible]
10 Kirtland Club	10-4-29	Nov. '41	49.80	1,000.00	-	[illegible]	-	[illegible]

SHORT TERM CAPITAL GAINS AND LOSSES -- ASSETS HELD FOR MORE THAN SIX MONTHS

6 Detroit Edison	12/31/41	12/31/41	98.46	-	-	98.46	100	98.46

John P. McWilliams,
900 The Arcade,
Cleveland, Ohio.

Joint Exhibit No. E-5

SCHEDULE "C"

Explanation of Deductions Claimed in Items 11, 13 and 17.

Item 11—Contributions.

Red Cross	$ 310.00
Cleveland Community Fund	1,200.00
British War Relief	10.00
Church of the Covenant	850.00
Museum of Art	10.00
Occidental College	62.50
Western Reserve	150.00
Princeton University	50.00
American Field Service	5.00
United Service Organizations	50.00
Ducks, Unlimited	10.00
Cleveland Hostels	10.00
Boystown	5.00
Total	$2,722.50

Item 13—Taxes

Personal Property	$1,997.56
Real Estate—South Park Res.	1,881.76
Mentor Ranch-house	47.74
Safety deposit box	5.50
Gasolene (3 cars)	75.00
Auto Licenses	48.00
Club Dues	98.60
Stock Sales	229.10
Sales Tax—general	150.00
Sales Tax—New car	69.26
Total	$4,602.52

Item 17—Safety Deposit Box—National City Bank $50.00

STIPULATION No. 5946

(Filed at Hearing April 19, 1945)

THE TAX COURT OF THE UNITED STATES

ESTATE OF SUSAN P. McWILLIAMS, DECEASED, JOHN P. McWILLIAMS, *Petitioner*,	Docket No. 5946
vs.	
COMMISSIONER OF INTERNAL REVENUE, *Respondent*.	

It is hereby stipulated and agreed, by and between the parties hereto, by their respective counsel, that the following facts are true and may be received and considered as being in evidence, subject, however, to the right of either party to introduce further evidence not inconsistent with the facts herein stipulated.

1. The petitioner is the Estate of Susan P. McWilliams, deceased. John P. McWilliams is the duly appointed and acting executor, whose place of business during the taxable year in question herein was 590 The Arcade, Cleveland, Ohio. The taxes in controversy are income taxes for the taxable year ended December 31, 1940, in the amount of $296.75. Notice of Deficiency was mailed by the Commissioner on June 6, 1944.

2. In computing said deficiency for the year ended December 31, 1940, the Commissioner disallowed a long-term capital loss claimed by the decedent amounting to $1,755.79 for the year ended December 31, 1940, reported by the decedent arising out of the sale of the following capital assets:

100 shares of Eastman Kodak Co.

3. The aforesaid capital loss claimed by decedent was disallowed by the Commissioner upon the ground that it was not allowable under the provisions of Section 24(b) of the Internal Revenue Code.

4. The securities listed in paragraph 2 herein were sold pursuant to orders given for the sale of these stocks to Curtiss-House & Company, stockbrokers in Cleveland, Ohio, and were executed on the New York Stock Exchange

in the regular manner by Clark, Dodge & Company, members of the New York Stock Exchange and correspondents to said Curtiss-House & Company. Said securities had been acquired and held by decedent more than eighteen months prior to their sale and were purchased by persons undisclosed to and unknown to decedent at the time of sale.

5. At the time that orders were placed for the sale of the above listed securities, orders were given by John P. McWilliams, her son, to Curtiss-House & Company, to purchase stock of the same company at approximately the same price for John P. McWilliams. Said orders were duly executed by the purchase of stock of the same company represented by certificates bearing different numbers than those sold by decedent; these purchase orders were executed in the regular manner on the New York Stock Exchange by Clark, Dodge & Company, the aforesaid correspondents of Curtiss-House & Company. The securities sold and purchased by decedent and John P. McWilliams, respectively, are set forth in the schedule attached hereto, together with other pertinent data, and marked "Joint Exhibit A-1".

6. It is further stipulated and agreed that photostatic copies of the customers' accounts carried on the books of Curtiss-House & Company in the names of Susan P. McWilliams and John P. McWilliams, which are attached hereto, are true and correct copies of said book accounts and may be received in evidence as "Joint Exhibits B-2" and "C-3".

7. Photostatic copy of the income tax return of Susan P. McWilliams for the year ended December 31, 1940, which is attached hereto, may be received in evidence as "Joint Exhibit D-4".

JOHN A. HADDEN,
Counsel for Petitioner.

J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue,
Counsel for Respondent.

JOINT EXHIBIT No. A-1

Date	No.	Stock	Price	Broker buying or selling stock	Certificate Number
1940		Susan P. McWilliams sold:			
11-28	100	Eastman Kodak Co.	140½	Neuhut, Plohn & Co.	N 56648
		John P. McWilliams bought:			
11-28	100	Eastman Kodak Co.	140½	Tucker Anthony & Co.	N 58817

FOR NOV 1940 YEAR

DATE	FOLIO	BOUGHT OR RECD	SECURITIES	PRICE	DEBIT	DATE	FOLIO	SOLD OR DELIVD	SECURITIES	PRICE	CREDIT	BALANCE
NOV 28		100	EASTMAN KODAK	RECD								
NOV 30			BALANCE	LONG								
		100	EASTMAN KODAK									

DUPLICATE STATEMENT

46

JOINT EXHIBIT No. B-2

IN ACCOUNT WITH CURTISS, HOUSE & CO. MRS SUSAN P MC WILLIAMS

FOR DEC 1940 YEAR

DATE	FOLIO	BOUGHT OR RECD	SECURITIES	PRICE	DEBIT	DATE	FOLIO	SOLD OR DELIVD	SECURITIES	PRICE	CREDIT	BALANCE
NOV 30			BALANCE	LONG								
		100	EASTMAN KODAK									
DEC 2	NC		CHE CK ON A/C		14012 45	DEC 2	CD	100	EASTMAN KODAK	140½	14012 45	0 00

DUPLICATE STATEMENT

47

Joint Exhibit No. B-

JOINT EXHIBIT No. C-3

In re: Estate of Susan P. McWilliams, Deceased, John P. McWilliams, Executor, Docket No. 5946.

Joint Exhibit C-3 is the same as Joint Exhibit B-2 in Docket No. 5945 which is incorporated herein by reference.

JOINT EXHIBIT No. D-4

FORM 1040

UNITED STATES
INDIVIDUAL INCOME AND DEFENSE TAX RETURN 1940

(Auditor's Stamp)

FOR GROSS INCOMES OF MORE THAN $5,000 FROM SALARIES, WAGES, DIVIDENDS, INTEREST, ANNUITIES, AND FOR INCOMES FROM OTHER SOURCES REGARDLESS OF AMOUNTS

For Calendar Year 1940

or fiscal year beginning 1-1, 1940, and ended 12-31-40, 19__

To be filed with the Collector of Internal Revenue for your district not later than the 15th day of the third month following the close of your taxable year

PRINT NAME AND ADDRESS PLAINLY. (See Instructions C)

McWilliams, Susan P.
(Name) (If joint return, give names of both husband and wife. If this is a joint return)

520 The Arcade
(Street and number, or rural route)

Cleveland (Post office) Cuyahoga (County) Ohio (State)

(Do not use this space)
Ex. 1938
No. 822196
(Cashier's Stamp)
Cash—Check—M.O.
First Payment $

NOT INVESTIGATED

INCOME

1. Salaries and other compensation for personal services. (From Schedule A)	$ 17,681	02
2. Dividends	522	76
3. Interest on bank deposits, notes, mortgages, etc.	5,915	19
4. Interest on corporation bonds		
5. Taxable interest on Government obligations, etc. (From Schedule B)		
6. Income (or loss) from partnerships, syndicates, pools, etc. (other than capital gains or losses). (Furnish names and addresses)		
7. Income from fiduciaries. (Furnish names and addresses)		
8. Rents and royalties. (From Schedule C)		
9. Income (or loss) from business or profession. (From Schedule D)		
10. (a) Net short-term gain from sale or exchange of capital assets. (From Schedule F) 873.33		
(b) Net long-term gain (or loss) from sale or exchange of capital assets. (From Schedule F)	120	77
(c) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule G)		
11. Other income (including income from annuities). (State source)		
12. Total income in items 1 to 11. (Enter corresponding income in Schedule I)		$ 24,279 74

DEDUCTIONS

13. Contributions paid. (Explain in Schedule H)	$ 240	00
14. Interest. (Explain in Schedule H)		
15. Taxes. (Explain in Schedule H)	1,163	59
16. Losses from fire, storm, shipwreck, or other casualty, or theft. (Explain in Schedule H)		
17. Bad debts. (Explain in Schedule H)		
18. Other deductions authorized by law. (Explain in Schedule H)		
19. Total deductions in items 13 to 18.		1,503 59
20. Net income (item 12 minus item 19)		$ 22,776 15

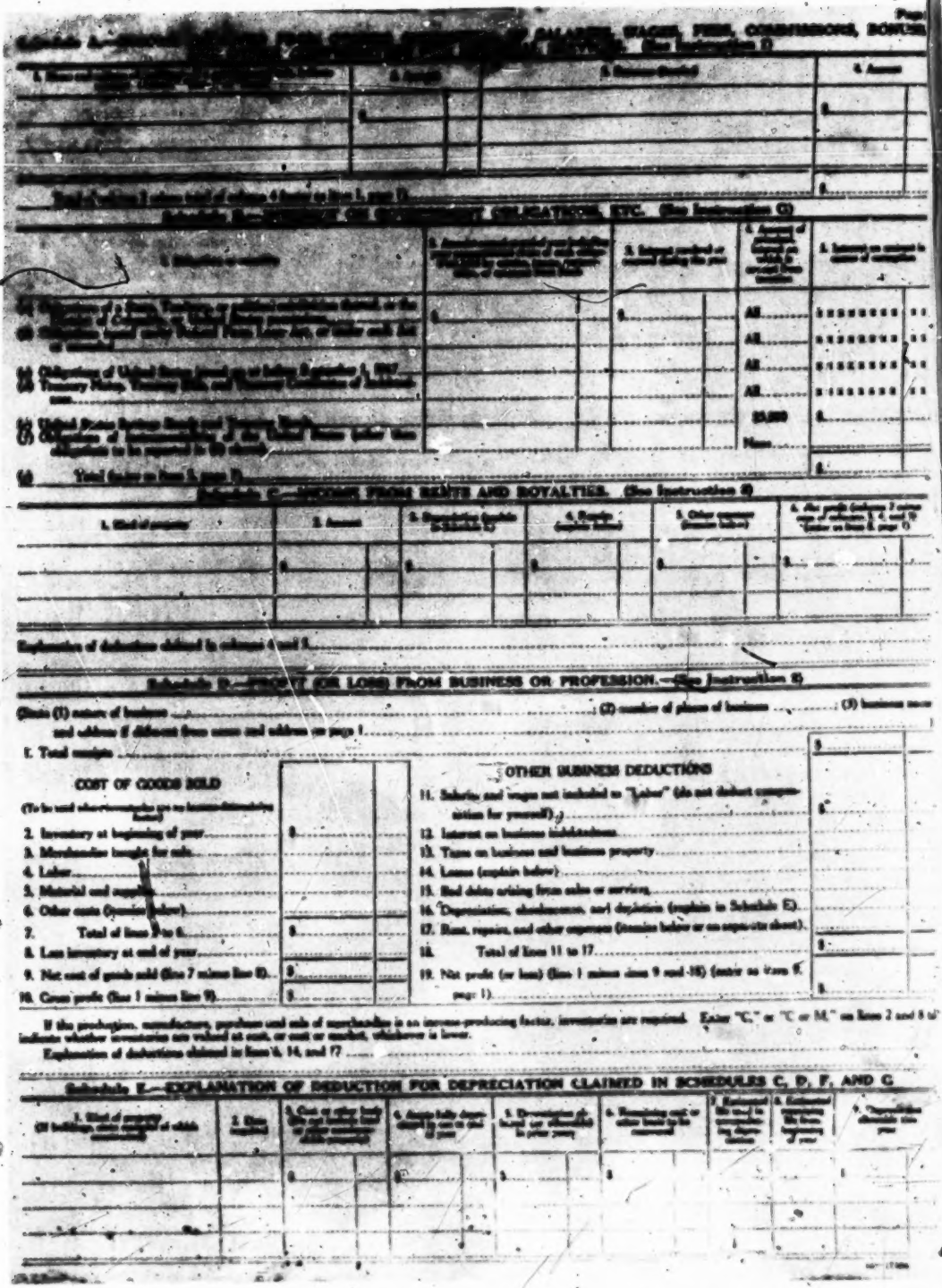
COMPUTATION OF TAX

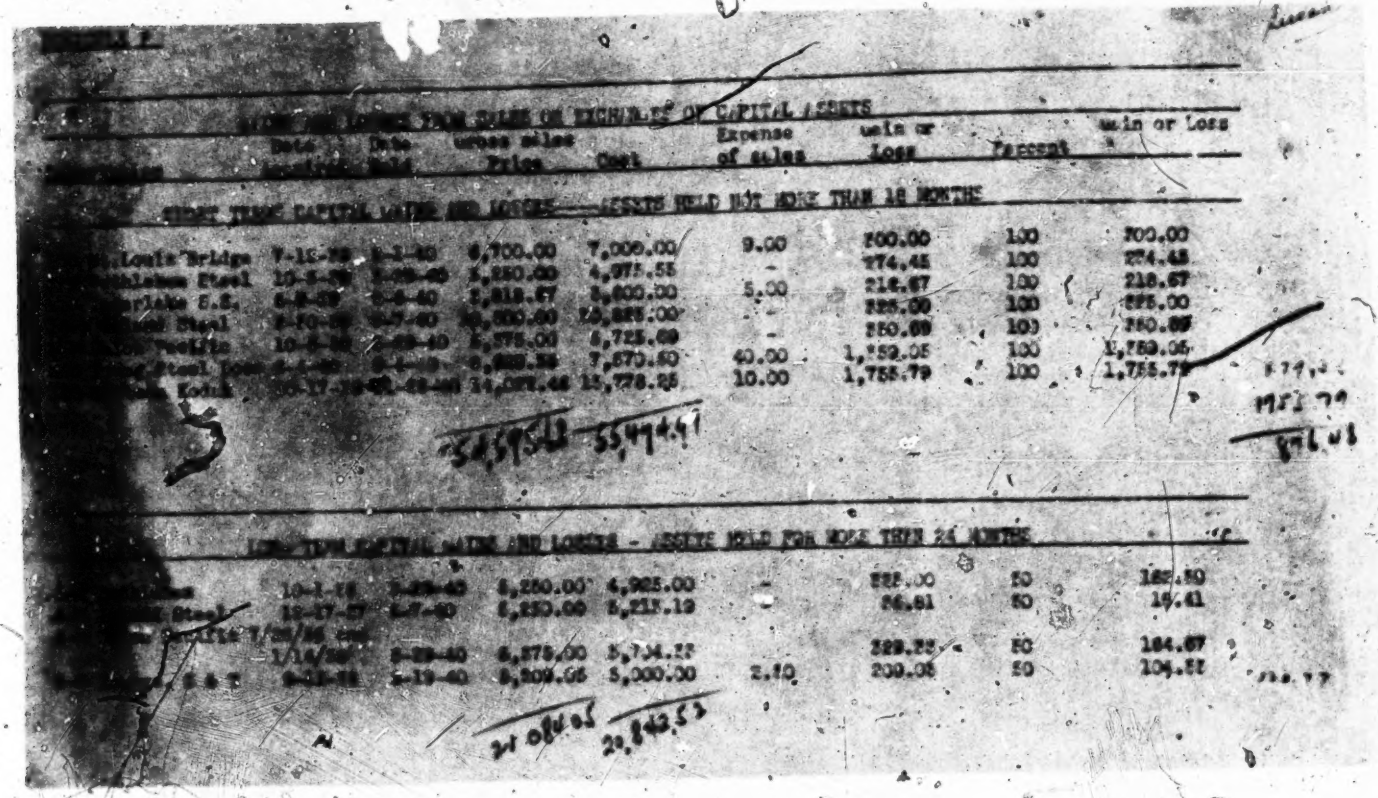
21. Net income (item 20 above)		$ 22,776	15		
22. Less: Personal exemption. (From Schedule J-1)	$ 800	00			
23. Credit for dependents. (From Schedule J-2)			800	00	
24. Balance (surtax net income)			$ 21,976	15	
25. Less: Interest on Government obligations, etc. (See Instruction 25)	$				
26. Earned income credit. (From Schedule K-1 or K-2)	800	00	800	00	
27. Balance subject to normal tax			$ 21,676	15	

28. Normal tax (4% of item 27)	$ 867	05
29. Surtax on item 24. (See Instruction 29)	2,354	28
30. Total (item 28 plus item 29)	$ 3,221	33
31. Total income tax (item 30, or if you had a net long-term capital gain or loss, enter item 31, Schedule P)	$ 3,221	33
32. Less: Income tax paid at source $ 23 10		
33. Income tax paid to a foreign country or U. S. possession (Attach Form 1116) 27 50	43	60
34. Balance of income tax (item 31 minus items 32 and 33)	$ 3,177	73
35. Defense tax (10% of item 34). (See Instruction 35)	317	78
36. Total income and defense taxes due (item 34 plus item 35)	$ 3,495	51

NOTE.—In order that this return may be considered [illegible] Supplements of the Internal Revenue Code, the data called for herein must be set forth [illegible]

Joint Exhibit No. D-4





SCHEDULE D

SHORT-TERM CAPITAL GAINS AND LOSSES — ASSETS HELD NOT MORE THAN 18 MONTHS

Description	Date Acquired	Date Sold	Gross Sales Price	Cost	Expense of Sales	Gain or Loss	Percent	Gain or Loss
...Louis Bridge	7-15-39	8-2-40	6,700.00	7,000.00	9.00	300.00	100	300.00
...hlehem Steel	10-5-39	8-28-40	4,250.00	4,975.55	-	274.45	100	274.45
...rfolk S.S.	8-8-39	8-8-40	3,818.67	3,600.00	5.00	218.67	100	218.67
...el Steel	8-10-39	8-27-40	26,000.00	25,825.00	-	175.00	100	175.00
...Textile	10-2-39	7-29-40	3,375.00	3,725.89	-	350.89	100	350.89
...Steel Corp.	8-1-40	8-1-40	8,869.34	7,670.50	40.00	1,159.05	100	1,159.05
...Ford	10-17-39	8-28-40	14,022.46	15,778.25	10.00	1,755.79	100	1,755.79

LONG-TERM CAPITAL GAINS AND LOSSES - ASSETS HELD FOR MORE THAN 18 MONTHS

Description	Date Acquired	Date Sold	Gross Sales Price	Cost	Expense of Sales	Gain or Loss	Percent	Gain or Loss
...ines	10-1-38	8-28-40	5,250.00	4,925.00	-	325.00	50	162.50
...el Steel	12-17-37	8-7-40	5,250.00	5,218.19	-	31.81	50	15.41
...Textile 7/25/36 ...ed 1/14/38		8-28-40	6,275.00	5,704.33		329.33	50	164.67
... & T	9-21-38	8-19-40	5,209.05	5,000.00	2.10	209.05	50	104.52

Joint Exhibit No. D-4

1. Kind of property (if necessary, attach statement of descriptive details not shown below)	2. Date acquired Mo. Day Year	3. Date sold Mo. Day Year	4. Gross sales price (see instr. 4 of Part I)	5. Cost or other basis	6. Expense of sale and cost of improvements and expenditures since acquired (see instr. 5 of Part I)	7. Depreciation allowed (or allowable) since acquisition (see instr. 6 of Part I)	8. Gain or loss (Subtract 7 from sum of 5 and 6)	Gain or loss to be reported on Schedule D (Form 1040) 9. Term	10. Amount
SHORT-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD NOT MORE THAN 12 MONTHS									
			$	$	$	$	$	100	$
			SEE SCHEDULE					100	
								100	
								100	
Total net short-term capital gain or loss (enter in line 1, column 3, of summary below)									$
LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 12 MONTHS BUT NOT FOR MORE THAN 24 MONTHS									
			$	$	$	$	$	60%	$
			SEE SCHEDULE					60%	
								60%	
								60%	
LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 24 MONTHS									
			$	$	$	$	$	50	
			SEE SCHEDULE					50	
								50	
								50	
Total net long-term capital gain or loss (enter in line 2, column 3, of summary below)									$

SUMMARY OF CAPITAL NET GAINS OR LOSSES

1. Classification	2. Net short-term capital gain or loss (if gain, include that gain in column 3 of net income for ... 's return)	3. Net gain or loss to be taken into account from column 10, above		4. Net gain or loss to be taken into account from recomputation and "minimum trust"		5. Total net gain or loss to be taken into account in column 2, 3, and 4 of this summary	
		Gain	Loss	Gain	Loss	Gain	Loss
1. Total net short-term capital gain or loss (enter as item 10 (c), page 1, amount of gain shown in column 3)	$	$	$ 873	$	$	$	(Do not enter here. See instruction 10)
2. Total net long-term capital gain or loss (enter as item 10 (f), page 1, amount of gain or loss shown in column 3)	$ 120 77	$	$	$	$	$ 120 77	$

COMPUTATION OF ALTERNATIVE TAX

Use only (1) If you had a net long-term capital gain, and item 24, page 1, exceeds $22,000
(2) If you had a net long-term capital loss, and such loss plus item 24, page 1, exceeds $22,000

1. Net income (item 28, page 1). (See Instruction 10)	$	10. Normal tax (4% of line 9)	$
2. (a) Net long-term capital gain (item 10 (f), page 1)		11. Enter on line 6 (See Instruction 20)	
(b) Net long-term capital loss (item 10 (f), page 1)		12. Partial tax (line 10 plus line 11)	$
3. Ordinary net income (line 1 minus line 2 (a) or line 1 plus line 2 (b)). (See Instruction 10)	$	13. (a) 30% of net long-term capital gain (30% of line 2 (a))	
4. Less: Personal exemption. (From Schedule J-1)	$	(b) 30% of net long-term capital loss (30% of line 2 (b))	
5. Credit for dependents. (From Schedule J-2)	$	14. Alternative tax (line 12 plus line 13 (a) or line 12 minus line 13 (b))	
6. Balance (carries net income)	$	15. Total normal tax and surtax (item 30, page 1)	$
7. Less: Interest on Government obligations, etc. (See Instruction 20)	$	16. Tax liability (if a net long-term capital gain, see line 7 (a), enter line 14 or line 15, whichever is the smaller; if a net long-term capital loss, see line 2 (b), enter line 14 or line 15, whichever is the greater). (Enter as item 31, page 1)	$
8. Earned income credit. (From Schedule K-1 or K-2). (See Inst. 19)	$		
9. Balance subject to normal tax	$		

Schedule C.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS
(See Instruction 19)

1. Kind of property	2. Date acquired	3. Gross sales price (contract price)	4. Cost or other basis	5. Expenses of sale and cost of improvements and expenditures since acquisition	6. Depreciation allowed (or allowable) since acquisition (see instr. 6 of Part I, Schedule D)	7. Gain or loss (subtract 6 plus sum of 4 and 5)
		$	$	$	$	$
Total net gain (or loss) (enter as item 29 (c), page 1)						$

State the family, fiduciary, or business relationship to you, if any, of purchaser of any of the items on this page.
If any of such items were acquired by you other than by purchase, explain fully how acquired.

Joint Exhibit No. D-4

11	Cleveland Community Fund	$ 500	00	16
	The Seeing Eye	300	00	
	Relief	10	00	
	Calvary Church	5	00	
	Assn. for Crippled	5	00	
	Red Cross	10	00	

Schedule I.—NONTAXABLE INCOME OTHER THAN INTEREST REPORTED IN SCHEDULE B.

1. Source of income	2. Nature of income	3. Amount

Schedule J.—EXPLANATION OF CREDITS CLAIMED IN ITEMS 22 AND 24. (See Instructions 23 and 25)

(1) Personal Exemption

Status	Number of months during the year in each status	Credit claimed
gle, or married and not living with husband or wife	12	$ 800 00
arried and living with husband or wife		
ad of family (explain below)		

(2) Credit for Dependents

Name of dependent (not children)	Number of months during year in home		Credit claimed
	Under 18 years	Over 18 years	
			$

Reason for support if over 18 years old

Schedule K.—COMPUTATION OF EARNED INCOME CREDIT. (See Instruction 26)

(1) If your net income is $5,000 or less, use only this part of Schedule K.

t income (item 20, page 1)	$	
rned income credit (10% of net income, above)		

(2) If your net income is more than $5,000, use only this part of Schedule K.

Earned net income (not more than $14,800)	$ 22,776	15
Net income (item 20, page 1)		
Earned income credit (10% of earned net income or 10% of net income, above, whichever amount is smaller, but do not enter less than $400)	300	00

QUESTIONS

State your principal occupation or profession Housewife

Check whether you are a citizen ☒ or a resident alien ☐.

Did you file a return for any prior year? Yes. If so, what was the latest year? 1940. To which Collector's office was it sent? Cleveland, Ohio

Are items of income or deductions of both husband and wife included in this return?

State (a) Name of husband or wife if separate return was made

(b) Personal exemption, if any, claimed therein

(c) Collector's office to which it was sent

6. Check whether this return was prepared on the cash ☒ or accrual ☐ basis.

7. Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company as defined by section 501 of the Internal Revenue Code? (Answer "yes" or "no") Yes (If answer is "yes," attach statement required by Instruction 7.)

AFFIDAVIT. (See Instruction 8)

I/we swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me/us, and to the best of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and the regulations issued under authority thereof.

x Susan P. McWilliams
(Signature) (See Instruction 8)

Subscribed and sworn to by Susan P. McWilliams

before me this 12th day of March, 1941

Merle McNab
(Signature and title of officer administering oath)

A notary seal is not required but should be affixed if one exists.

MERLE McNAB, Notary Public
My commission expires June 11, 1941

(Signature)
(If this is a joint return (not made by agent), it must be signed by both husband and wife. It must be sworn to before a proper officer by the spouse preparing the return. If neither or both prepare the return, it must be sworn to by both spouses.)

AFFIDAVIT. (See Instruction 8)

(If this return was prepared for you by some other person, the following affidavit must be executed)

I/we swear (or affirm) that I/we prepared this return for the person or persons named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the tax liability of the person or persons for whom this return has been prepared of which I/we have any knowledge.

Susan P. McWilliams
(Signature of person preparing the return)

(Signature of person preparing the return)

(Address of firm or employer, if any)

Subscribed and sworn to before me this 12th day of March, 1941

Merle McNab
(Signature and title of officer administering oath)

MERLE McNAB, Notary Public
My commission expires June 11, 1941

STIPULATION No. 5947

(Filed at Hearing April 19, 1945)

THE TAX COURT OF THE UNITED STATES

BROOKS B. McWILLIAMS, *Petitioner,*		
vs.		Docket No. 5947
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*		

It is hereby stipulated and agreed, by and between the parties hereto, by their respective counsel, that the following facts are true and may be received and considered as being in evidence, subject, however, to the right of either party to introduce further evidence not inconsistent with the facts herein stipulated.

1. The petitioner, Brooks B. McWilliams, is an individual whose address during the taxable years in question herein was 19100 South Park Boulevard, Cleveland, Ohio. The taxes in controversy are income taxes for the taxable year ended December 31, 1940, in the amount of $1,845.52 and for the year ended December 31, 1941, in the amount of $4,184.07. Notice of Deficiency was mailed by the Commissioner on June 6, 1944.

2. In computing said deficiencies for the years ended December 31, 1940 and December 31, 1941, the Commissioner disallowed long-term capital losses claimed by the taxpayer, amounting to $5,592.49 for the year ended December 31, 1940 and to $13,946.95 for the year ended December 31, 1941, reported by the taxpayer arising out of the sale of the following capital assets:

1940

300 shares of General Electric
100 shares of Standard Oil Company of N. J.
200 shares of International Nickel Co. of Canada, Ltd.

1941

1000 shares of Basic Refractories, Inc.
300 shares of Libby-Owens-Ford Glass Co.

100 shares of E. I. DuPont deNemours Co.
200 shares of General Motors Corporation
100 Shares of American Tel. & Tel. Co.
200 shares of Liggett & Myers Tobacco Co.

3. The aforesaid capital losses claimed by the taxpayer were disallowed by the Commissioner upon the ground that they were not allowable under the provisions of Section 24(b) of the Internal Revenue Code.

4. All of the securities listed in paragraph 2 herein were sold pursuant to orders given for the sale of these stocks to Curtiss-House & Company, stockbrokers in Cleveland, Ohio, and were executed on the New York Stock Exchange in the regular manner by Clarke, Dodge & Company, members of the New York Stock Exchange and correspondents to said Curtiss-House & Company. Said securities had been acquired and held by the taxpayer more than eighteen months prior to their sale and were purchased by persons undisclosed to and unknown to the taxpayer at the time of sale.

5. At the time that orders were placed for the sale of the above-listed securities, orders were given by her husband, John P. McWilliams, to Curtiss-House & Company to purchase stock of the same companies at approximately the same prices for John P. McWilliams. Said orders were duly executed by the purchase of stock of the same companies represented by certificates bearing different numbers than those sold by the taxpayer; these purchase orders were executed in the regular manner on the New York Stock Exchange by Clarke, Dodge & Company, the aforesaid correspondents of Curtiss-House & Company. The securities sold and purchased by the taxpayer and her husband, respectively, are set forth in the schedule attached hereto, together with other pertinent data, and marked "Joint Exhibit A-1".

6. It is further stipulated and agreed that photostatic copies of the customers' accounts carried on the books of Curtiss-House & Company in the names of Brooks B. McWilliams and John P. McWilliams, which are attached hereto, are true and correct copies of said book accounts

and may be received in evidence as "Joint Exhibits B-2" and "C-3".

7. Photostatic copies of the income tax returns of Brooks B. McWilliams for the years ended December 31, 1940 and 1941, which are attached hereto, may be received in evidence as "Joint Exhibits D-4" and "E-5".

JOHN A. HADDEN,
Counsel for Petitioner.

J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue,
Counsel for Respondent.

JOINT EXHIBIT No. A-1

Docket No. 5947

JOINT EXHIBIT A-1

Date	No. of Shares	Stock	Price*	Broker buying or selling stock	Certificate Numbers
1940		Brooks B. McWilliams Sold:			
11-27	200	General Electric	32-3/4	Mitchell, Hutchins & Co.	(691-950 (691-951
"	100	" "	32-5/8	E. F. Hutton & Co.	712-622
		John P. McWilliams Bought:			
11-27	200	General Electric	32-3/4	Fuller Rodney & Co.	(798-061 (798-062
"	100	" "	32-5/8	Jackson & Curtiss	798-063
		Brooks B. McWilliams Sold;			
11-27	100	Standard Oil of N.J.	34-1/4	Maynard Oakley & Lawrence	B-499-550
		John P. McWilliams Bought:			
11-27	100	Standard Oil of N.J.	34-1/4	Eastman, Dillon & Co.	B-569-080
		Brooks B. McWilliams Sold;			
11-27	200	International Nickel of Canada, Ltd.	25-1/4	E. F. Hutton & Co.	NA 313-021 NA 317-469
		John P. McWilliams Bought:			
11-27	100	International Nickel of Canada, Ltd.	25-1/4	Fenner & Beane	NA 393-791
"	"	" "	25-1/4	G.M.P.Murphy	NA 393-792

* The amount received by taxpayer in each instance was the price indicated less commissions and taxes. The amount paid by J. P. McWilliams in each instance was the price plus commissions and taxes.

Joint Exhibit No. A-1

Docket No. 5947

JOINT EXHIBIT A-1, cont'd.

Date	No. of Shares	Stock	Price	Broker buying or selling stock	Certificate Numbers
1941					
			Brooks B. McWilliams sold:		
7-9	100	Basic Refractories	7-1/4	Jackson & Curtis	
7-10	200	" "	7-1/4	Clark, Dodge & Co.	
7-14	200	" "	7-1/2	Fenner & Beane	1496
7-14	100	" "	7-3/8	" "	to
7-22	100	" "	7-1/2	" "	1505 in
7-22	100	" "	7-1/2	Bear, Stearns & Co.	
			7-5/8	Hallgarten & Co.	
			J. B. McWilliams bought:		
7-9	100	Basic Refractories	7-1/4	J.H.Brooks & Co.	
7-10	100	" "	7-1/4	Parrish & Co.	
7-10	100	" "	7-1/4	Reich & Co.	
7-14	100	Basic Refractories	7-1/2	Andrews, Desner & Rothschild	2204 to 2211,
7-14	100	" "	7-1/2	A. M. Kidder & Co.	
7-14	200	" "	7-3/8	Goodbody & Co.	
7-14	100	" "	7-1/2	Parrish & Co.	
7-22	100	" "	7-1/2	Parrish & Co.	2216
7-22	100	" "	7-5/8	Goodbody & Co.	2217
			Brooks B. McWilliams sold:		
7-3	100	Libby Owens Ford	28	Carlisle Mellick & Co.	N 56-227
7-3	100	" " "	28-1/8	Thomson & McKinnon	N 56-228
7-3	100	" " "	28-3/8	Dominick & Dominick	N 56-229
			J. B. McWilliams bought:		
7-3	100	Libby Owens Ford	28	Ira Haupt & Co.	N 61-327
7-3	100	" " "	28-1/8	White Weld & Co.	N 61-328
7-3	100	" " "	28-3/8	Ira Haupt & Co.	N 61-329
			Brooks B. McWilliams sold:		
7-3	100	E.I.DuPont deNemours	154-3/4	Tucker Anthony & Co.	F 218-18
			John B. McWilliams bought		
7-3	100	E.I.DuPont deNemours	154-3/4	Hay Foles & Co.	F 218-13

6

Joint Exhibit No. A-1

Docket No. 5947

JOINT EXHIBIT A-1,cont'd.

Date	No. of Sh.	Stock	Price	Broker buying or selling stock	Certificate numbers
1941			Brooks B. McWilliams sold:		
[illegible]	100	General Motors	37-3/4	Abraham & Co.	D 606-713
	100	" "	37-3/4	Burr Cohen & Co.	D 606-714
			J. P. McWilliams bought:		
[illegible]	100	General Motors	37-3/4	Laird & Co.	D 667-209
	100	" "	37-3/4	Baker, Weeks & Harden	D 667-210
			Brooks B. McWilliams sold:		
10	100	American T & T	132-3/4	F. P. Ristine & Co.	G 129-828
			J. P. McWilliams bought:		
10	100	American T & T	132-3/4	F. P. Ristine & Co.	G 147-240
			Brooks B. McWilliams sold:		
10	200	Liggett & Myers	68	Adler Coleman & Co.	D101-151 D101-544
			J. P. McWilliams bought:		
[illegible]	200	Liggett & Myers	68	Eastman Dillon & Co.	D 106-766 D 106-767

The amount received by taxpayer in each instance was the price indicated less commissions and taxes. The amount paid by John P. McWilliams in each instance was the price plus commissions and taxes.

JOINT EXHIBIT No. B-2

IN ACCOUNT WITH CURTISS, HOUSE & CO.

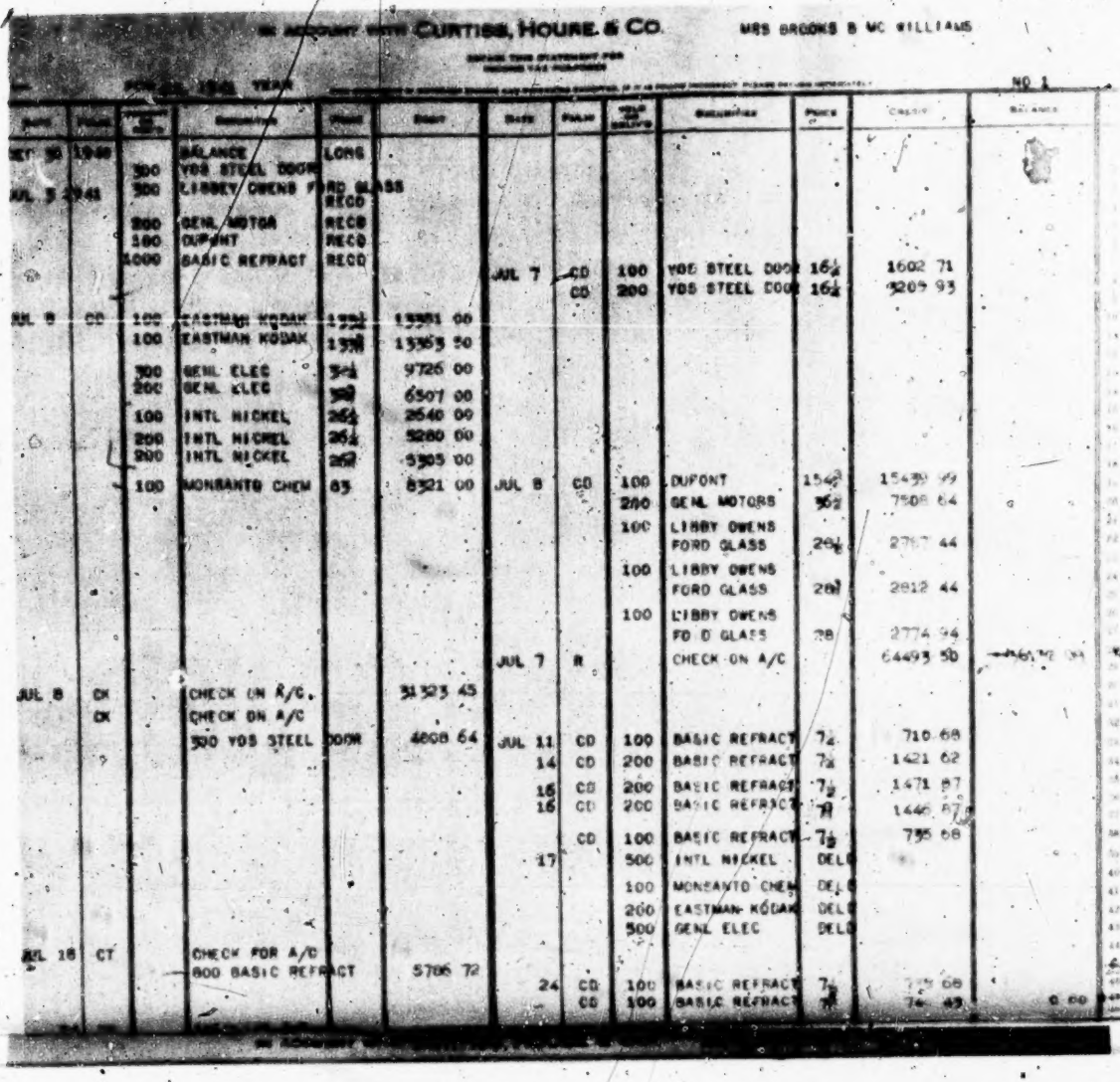
FOR NOV 1940 YEAR

DATE	PAGE	AMOUNT OF RECD	SECURITIES	PRICE	DEBIT	DATE	PAGE	AMOUNT OF DELIV	DESCRIPTION	PRICE	CREDIT	BALANCE
OCT 31			BALANCE	LONG								
		10M	YOS S & T 48/61									
		300	YOS STEEL DOOR									
						NOV 1	CD	100	YOS STEEL DOOR 20¼		1999 95	
							CD	200	YOS STEEL DOOR 20¼		3999 66	
						6	CD	200	YOS STEEL DOOR 20¼		3999 66	
NOV 7	NC		CHECK ON A/C		9999 27	NOV 12	CD	100	YOS STEEL DOOR 20¼		1999 70	
							CD	100	YOS STEEL DOOR 20¼		1999 95	
							CD	100	YOS STEEL DOOR 20¼		2024 98	
							CD	100	YOS STEEL DOOR 20¼		2024 98	
		10M	YOS S & T 3½/1/1/60									
			—O—									
			A/C PURCH AT 103									
				RECD								
	J		A/C 10M YOS S & T									
			3½/60-0 AT 103		10307 22							
		1000	YOS STEEL DOOR	RECD								
	CT		CHECK ON A/C		129 45	NOV 9		10M	YOS S & T 48/61			
									—C— DEL			
							R		CHECK ON A/C			
									REDEMP OF 10M			
									YOS S & T 48/61		10436 67	
						13	CD	200	YOS STEEL DOOR 20¼		4099 91	
							CD	100	YOS STEEL DOOR 20¼		2049 70	
			CHECK ON A/C									
			700 YOS STEEL	DOOR	14199 16							0 00
						NOV 12		10M	YOS S & T 1ST			
									MTGE 3½/60-0	DEL		
						29	CD	200	GEN ELEC	32½	6497 61	
							CD	100	GEN ELEC	32⅝	3236 43	
							CD	200	INTL NICKEL	25¼	4999 89	
							CD	100	SO OF N J	34⅛	3403 43	
NOV 28		10M	COM OF CANADA 3½/67	RECD								
		10M	NICKEL PLATE 4/65	RECD								
		200	INTL NICKEL	RECD								
		100	SO OF N J	RECD								
		100	GENL ELEC	RECD								
	29	NC	CHECK ON A/C									
			500 GENL ELEC									
			100 SO OF N J									
			200 INTL NICKEL		18127 36							

Joint Exhibit No. B-2

NO 2

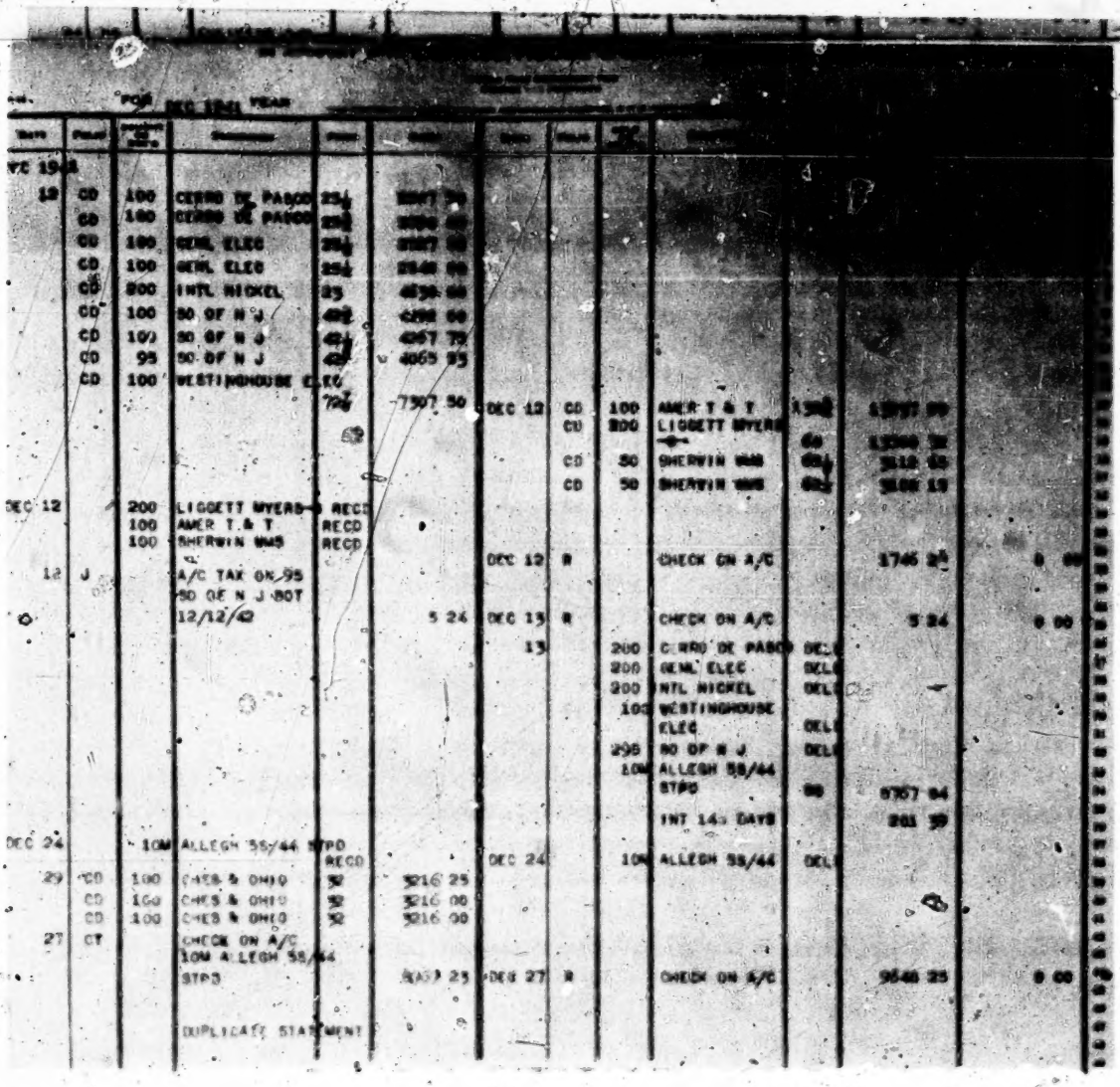
DUPLICATE STATEMENT



MR ACCOUNT WITH CURTISS, HOURE & CO. MRS BROOKS B MC WILLIAMS

FOR THE YEAR NO 1

DATE	PAGE	QUANTITY	DESCRIPTION	PRICE	AMOUNT	DATE	PAGE	QUANTITY	DESCRIPTION	PRICE	CREDIT	BALANCE
ET 30	1940		BALANCE	LONG								
		300	YOS STEEL DOOR									
UL 3	1941	500	LIBBY OWENS FORD GLASS	RECD								
		200	GENL MOTORS	RECD								
		100	DUPONT	RECD								
		1000	BASIC REFRACT	RECD		JUL 7	CD	100	YOS STEEL DOOR	16¼	1602 71	
							CD	200	YOS STEEL DOOR	16¼	3209 93	
UL 9	CD	100	EASTMAN KODAK	1938	15381 00							
		100	EASTMAN KODAK	1938	15365 50							
		300	GENL ELEC	34½	9726 00							
		200	GENL ELEC	32½	6507 00							
		100	INTL NICKEL	26½	2640 00							
		200	INTL NICKEL	26½	5280 00							
		200	INTL NICKEL	26½	5305 00							
		100	MONSANTO CHEM	83	8321 00	JUL 8	CD	100	DUPONT	154	15439 69	
								200	GENL MOTORS	36½	7508 64	
								100	LIBBY OWENS FORD GLASS	28½	2767 44	
								100	LIBBY OWENS FORD GLASS	28½	2812 44	
								100	LIBBY OWENS FD D GLASS	28	2774 94	
						JUL 7	R		CHECK ON A/C		64493 50	[illegible]
JUL 8	CK		CHECK ON A/C.		31323 45							
	CK		CHECK ON A/C									
			300 YOS STEEL DOOR		4608 64	JUL 11	CD	100	BASIC REFRACT	7½	710 68	
						14	CD	200	BASIC REFRACT	7½	1421 62	
						15	CD	200	BASIC REFRACT	7½	1471 87	
						16	CD	200	BASIC REFRACT	7½	1446 87	
							CD	100	BASIC REFRACT	7½	755 68	
						17		500	INTL NICKEL	DEL		
								100	MONSANTO CHEM	DEL		
								200	EASTMAN KODAK	DEL		
								500	GENL ELEC	DEL		
UL 18	CT		CHECK FOR A/C									
			800 BASIC REFRACT		5706 72							
						24	CD	100	BASIC REFRACT	7½	755 68	
							CD	100	BASIC REFRACT	7½	74 49	0 00



Date	Field	Quantity or Amount	Description	Price	Amount	Date	Field	%	Description			
DEC 1941												
12	CD	100	CERRO DE PASCO	25¼	[illegible]							
	CD	100	CERRO DE PASCO	25¼	[illegible]							
	CD	100	GENL ELEC	25¼	[illegible]							
	CD	100	GENL ELEC	25¼	[illegible]							
	CD	200	INTL NICKEL	23	4630 00							
	CD	100	50 OF N J	42½	4268 50							
	CD	100	50 OF N J	42¼	4267 75							
	CD	95	50 OF N J	42¾	4065 25							
	CD	100	WESTINGHOUSE ELEC	72¾	7307 50	DEC 12	CD	100	AMER T & T	[illegible]	[illegible]	
							CD	200	LIGGETT MYERS	60	12268 75	
							CD	50	SHERWIN WMS	62½	3112 50	
							CD	50	SHERWIN WMS	62¼	3106 13	
DEC 12		200	LIGGETT MYERS	RECD								
		100	AMER T & T	RECD								
		100	SHERWIN WMS	RECD								
						DEC 12	R		CHECK ON A/C		1746 25	0 00
12	J		A/C TAX ON 95 SO OF N J BOT 12/12/42		5 24	DEC 13	R		CHECK ON A/C		5 24	0 00
						13		200	CERRO DE PASCO	DEL		
								200	GENL ELEC	DEL		
								200	NTL NICKEL	DEL		
								100	WESTINGHOUSE ELEC	DEL		
								295	SO OF N J	DEL		
								10M	ALLEGH 58/44 STPD	99	9707 94	
									INT 145 DAYS		281 39	
DEC 24		10M	ALLEGH 58/44 STPD	RECD		DEC 24		10M	ALLEGH 58/44	DEL		
29	CD	100	CHES & OHIO	52	5216 25							
	CD	100	CHES & OHIO	52	5216 00							
	CD	100	CHES & OHIO	52	5216 00							
27	CT		CHECK ON A/C 10M ALLEGH 58/44 STPD		9648 25	DEC 27	R		CHECK ON A/C		9648 25	0 00
			DUPLICATE STATEMENT									

IN ACCOUNT WITH CURTISS, HOUSE & CO. JOHN P MC WILLIAMS

OBTAIN THIS STATEMENT FOR INCOME TAX PURPOSES

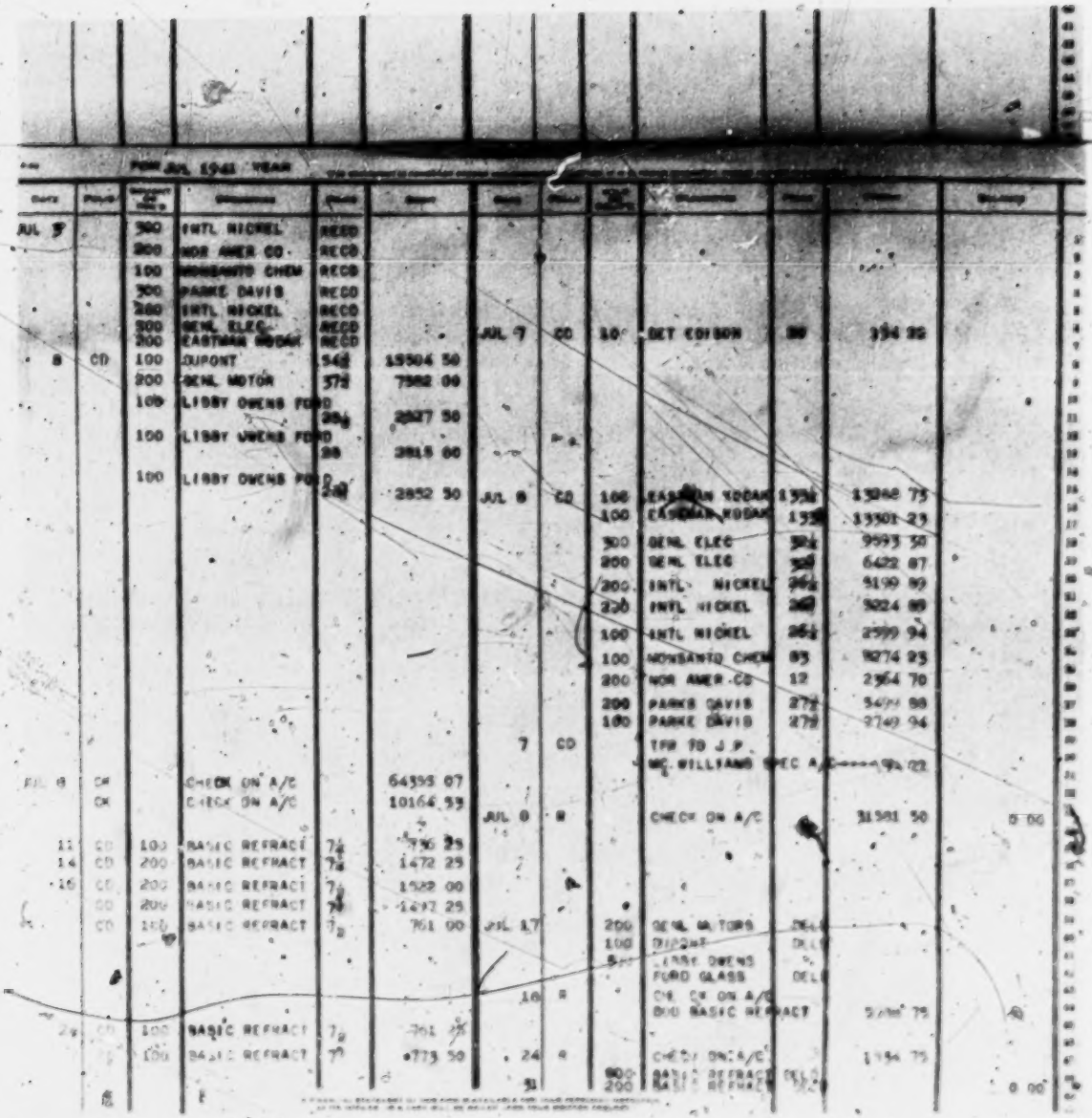
FOR NOV 1960 YEAR

DATE	FOLIO	BOUGHT OR REC'D	SECURITIES	PRICE	DEBIT	DATE	FOLIO	SOLD OR DELIVD	SECURITIES	PRICE	CREDIT	BALANCE
NOV 9		10M	YOS S & T 3⅛/ 11/1/60 A/C PURCH AT 103	RECD								
9	J		A/C 10M YOS S & T 3⅛/60 -O-									
			BOUGHT AT 103		10307 22							
9	CT		CHECK ON A/C		129 45	NOV 9		10M	YOS S & T 4⅛/61-8 A/C REDEMP	DEL		
						9	R		CHECK ON A/C REDEMP OF 10M YOS S & T 4⅛/61		10436 67	0 00
						NOV 12		10M	YOS S & T 1ST MTGE 3⅛/60-C	DELD		
NOV 29	CD	200	GENL ELEC	32⅝	6582 00							
	CD	100	GENL ELEC	32⅝	3278 50							
	CD	200	INTER NICKEL	25¼	5080 00							
	CD	100	SO OF N J	34⅛	3425 25	NOV 29	R		CHECK ON A/C		18361 75	
						30	R		CHECK ON A/C		14077 25	[illegible]
NOV 30			BALANCE .	LONG		NOV 30			BALANCE		14077 25	
		300	GENL ELEC									
		200	INTER NICKEL									
		100	SO OF N J									
			DUPLICATE STATEMENT									

JOINT EXHIBIT No. C-3

64

Joint Exhibit No. C-3



FOR JUL 1941 YEAR

DATE	PURCH	BOUGHT OR SOLD	SECURITIES	CHARGE	DEBIT	CREDIT	PURCH	BOUGHT OR SOLD	SECURITIES	PRICE	CREDIT	BALANCE
JUL 5		300	INTL NICKEL	RECD								
		200	NOR AMER CO	RECD								
		100	MONSANTO CHEM	RECD								
		300	PARKE DAVIS	RECD								
		260	INTL NICKEL	RECD								
		300	GENL ELEC	RECD			JUL 7	CD	10	DET EDISON	30	334 25
		200	EASTMAN KODAK	RECD								
8	CD	100	DUPONT	142	15504 50							
		200	GENL MOTOR	37½	7562 00							
		100	LIBBY OWENS FORD	28⅛	2827 50							
		100	LIBBY OWENS FORD	28	2815 00							
		100	LIBBY OWENS FORD	28⅝	2852 50		JUL 8	CD	100	EASTMAN KODAK	133⅛	13260 75
									100	EASTMAN KODAK	135	13501 25
									300	GENL ELEC	32½	9693 50
									200	GENL ELEC	32⅛	6422 87
									200	INTL NICKEL	26½	5199 89
									220	INTL NICKEL	26⅜	5824 89
									100	INTL NICKEL	26½	2999 94
									100	MONSANTO CHEM	93	9274 25
									200	NOR AMER CO	12	2364 70
									200	PARKE DAVIS	27⅛	5499 88
									100	PARKE DAVIS	27⅜	2749 94
							7	CD		TFR TO J P MC WILLIAMS SEC A/C		94 22
JUL 8	CK		CHECK ON A/C		64393 07							
	CK		CHECK ON A/C		10164 53		JUL 8	R		CHECK ON A/C		31581 50 0 00
11	CD	100	BASIC REFRACT	7½	736 25							
14	CD	200	BASIC REFRACT	7⅜	1472 25							
15	CD	200	BASIC REFRACT	7½	1522 00							
	CD	200	BASIC REFRACT	7⅜	1492 25							
	CD	100	BASIC REFRACT	7½	761 00		JUL 17		200	GENL MOTORS	DELI	
									100	DUPONT	DELI	
									5	LIBBY OWENS FORD GLASS	DELI	
							16	R		CK CK ON A/C DIV BASIC REFRACT		5686 75 40
24	CD	100	BASIC REFRACT	7½	761 25							
	CD	100	BASIC REFRACT	7⅜	773 50		24	R		CHECK ON A/C		1196 75
							31		900	BASIC REFRACT DIV		
									200	BASIC REFRACT DIV		0 00

Joint Exhibit No. C-3

IN ACCOUNT WITH CURTISS, HOUSE & CO. JOHN P MC WILLIAMS

FOR DEC 1941 YEAR

DATE	FOLIO	PURCHASES OR SALES	DESCRIPTION	PRICE	AMOUNT	DATE	FOLIO	SALES OR PURCHASES	DESCRIPTION	PRICE	CREDIT	BALANCE
DEC 12	CD	800	AMER T & T	139½	15901 00							
		200	LIGGETT MYERS B	66	13199 00							
						DEC 12	CD	100	CERRO DE PASCO	25½	2549 44	
							CD	100	GENL ELEC	25¼	2457 44	
							CD	100	GENL ELEC	25¼	2499 94	
							CD	200	INTL NICKEL	25	4549 90	
							CD	300	NOR AMER	10¼	3022 45	
							CD	100	WESTINGHOUSE ELEC	72½	7260 35	
						12	R		CHECK ON A/C		4570 00	0 00
12		100	CERRO DE PASCO	RECD								
		200	GENL ELEC	RECD								
		200	INTL NICKEL	RECD								
		300	NOR AMER	RECD								
		100	WESTINGHOUSE ELEC	RECD								
						DEC 22		100	AMER T & T	DELD		
								200	LIGGETT MYERS B	DELD		

DUPLICATE STATEMENT

JOINT EXHIBIT No. D-4

FORM 1040

UNITED STATES
INDIVIDUAL INCOME AND DEFENSE TAX RETURN 1940

NOT

FOR GROSS INCOMES OF MORE THAN $5,000 FROM SALARIES, WAGES, DIVIDENDS, INTEREST, ANNUITIES, AND FOR INCOMES FROM OTHER SOURCES REGARDLESS OF AMOUNTS

For Calendar Year 1940

or fiscal year beginning Jan. 1, 1940, and ended January 1, 1941

To be filed with the Collector of Internal Revenue for your district not later than the 15th day of the third month following the close of your taxable year

PRINT NAME AND ADDRESS PLAINLY.

McWilliams, Brooks B.

590 The Arcade

Cleveland Cuyahoga Ohio

1731

822139

C. SURVEY REVIEW

INCOME

Salaries and other compensation for personal services	$ 38,320 00
Dividends	
Interest on bank deposits, notes, mortgages, etc.	4,980 00
Interest on corporation bonds	
Taxable interest on Government obligations, etc.	
Income (or loss) from partnerships, syndicates, pools, etc. (other than capital gains or losses)	
Income from fiduciaries	
Rents and royalties	
Income (or loss) from business or profession	
a) Net short-term gain from sale or exchange of capital assets	247 12
b) Net long-term gain (or loss) from sale or exchange of capital assets	5,274 99
c) Net gain (or loss) from sale or exchange of property other than capital assets	
Other income (including income from annuities)	
Total income in Items 1 to 11	$ 50,274 11

DEDUCTIONS

Contributions paid	$ 177 00
Interest	2,100 98
Taxes	
Losses from fire, storm, shipwreck, or other casualty, or theft	
Bad debts	
Other deductions authorized by law	
Total deductions in Items 13 to 16	2,277 98
Net income (Item 12 minus Item 17)	$ 47,996 13

COMPUTATION OF TAX

Net income (Item 18 above)	$ 47,996 13
Less: Personal exemption	-
Credit for dependents	-
Balance (section 400 income)	$ 47,996 13
Less: Earned income credit	800 00
	$ 47,996 13
24. Normal tax (4% of Item 23)	$ 1,906 18
25. Surtax on Item 24	10,965 55
26. Total (Item 24 plus Item 25)	$ 12,868 73
31. Total income tax (Item 26, or if you filed a joint return, the total of Item 26 for both husband and wife)	$ 12,122 96
32. Victory tax withheld at source	$ 50 00
33. Income tax paid to a foreign country or U.S. possession	00
	50 00
34. Balance of income tax due (Item 31 minus Item 33)	$ 12,072 96
35. Defense tax (10% of Item 26)	1,286 87
36. Total income and defense tax due	

Joint Exhibit No. D-4

Schedule A.—INCOME [redacted] FROM OTHERS CONSISTING OF SALARIES, WAGES, FEES, COMMISSIONS, BONUSES AND OTHER COMPENSATION FOR PERSONAL SERVICES. (See Instruction 1)

Page 1

1. Name and address of Employer. If a governmental unit, indicate whether Federal, State, or Local	2. Amount	3. Expenses (itemize)	4. Amount
	$		$

Total of column 2 minus total of column 4 (enter in item 1, page 1) $

Schedule B.—INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See Instruction G)

1. Obligations or securities	2. Amount owned at end of year including your proportionate share of such obligations held by estates, trusts, partnerships, or syndicates listed herein	3. Interest received or accrued during the year	4. Amount of principal, interest on which is exempt from taxation	5. Interest on amount shown in column 4
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions	$	$	All	
(b) Obligations issued under Federal Farm Loan Act, or under such Act as amended			All	
(c) Obligations of United States issued on or before September 1, 1917			All	
(d) Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness			All	
(e) United States Savings Bonds and Treasury Bonds			$1,000	$
(f) Obligations of instrumentalities of the United States (other than obligations to be reported in (d) above)			None	
(g) Total (enter as item 5, page 1)				$

Schedule C.—INCOME FROM RENTS AND ROYALTIES. (See Instruction 8)

1. Kind of property	2. Amount	3. Depreciation (explain in Schedule E)	4. Repairs (explain below)	5. Other expenses (itemize below)	6. Net profit (column 2 minus total of columns 3, 4, and 5) (enter on line 6, page 1)
	$	$	$	$	$

Explanation of deductions claimed in columns 4 and 5

Schedule D.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (See Instruction 9)

(Note (1) nature of business ..... (2) number of places of business ..... (3) business name and address if different from name and address on page 1

1. Total receipts ..... $

COST OF GOODS SOLD (To be used where inventories are an income-determining factor)		
2. Inventory at beginning of year	$	
3. Merchandise bought for sale		
4. Labor		
5. Material and supplies		
6. Other costs (itemize below)		
7. Total of lines 2 to 6	$	
8. Less inventory at end of year		
9. Net cost of goods sold (line 7 minus line 8)	$	
10. Gross profit (line 1 minus line 9)	$	

OTHER BUSINESS DEDUCTIONS	
11. Salaries and wages not included as "Labor" (do not deduct compensation for yourself)	$
12. Interest on business indebtedness	
13. Taxes on business and business property	
14. Losses (explain below)	
15. Bad debts arising from sales or services	
16. Depreciation, obsolescence, and depletion (explain in Schedule E)	
17. Rent, repairs, and other expenses (itemize below or on separate sheet)	
18. Total of lines 11 to 17	$
19. Net profit (or loss) (line 1 minus line 9 and 18) (enter on line 9, page 1)	$

If the production, manufacturing, purchase and sale of merchandise is an income-producing factor, inventories are required. Enter "C," "P," "C or M," on lines 2 and 8 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.

Explanation of deductions claimed in lines 6, 14, and 17

Schedule E.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES C, D, F, AND G

1. Kind of property (or type of building, name and address of tenant occupying)	2. Date acquired	3. Cost or other basis (as explained in instructions under Schedule E)	4. Amount fully depreciated as of end of year	5. Depreciation allowed or allowable in prior years	6. Depreciation rate or rates used for computation	7. Depreciation allowable for the year (see Regulations)	8. Depreciation allowed (or allowable) for the year (see Regulations)	9. Depreciation claimed this year
		$	$	$	$			$

16—47668

Joint Exhibit No. D-4

Non-Taxable Income Received during 1941 and not reported as income in this return.

	MUNICIPAL BONDS	INTEREST
10-M	City of Detroit	325.00
20-M	Metrop. Water Dist. Southern Calif	800.00
30-M	City of New York municipal Purposes	975.00
10-M	City of Philadelphia	400.00
5-M	San Francisco Oakland Bay Bridge	200.00

Security First National Bank of L. A.
W. J. Barlow Trust S-6568, composed of non-taxables, with one exception:
2-M Central New York Power 2¾%.
Pro-rated interest on these bonds amounted to $68.80 and is included in item 3, page 1.

Non-taxable interest in this trust received during year 1941 amounted to 422.23

Total 3,122.23

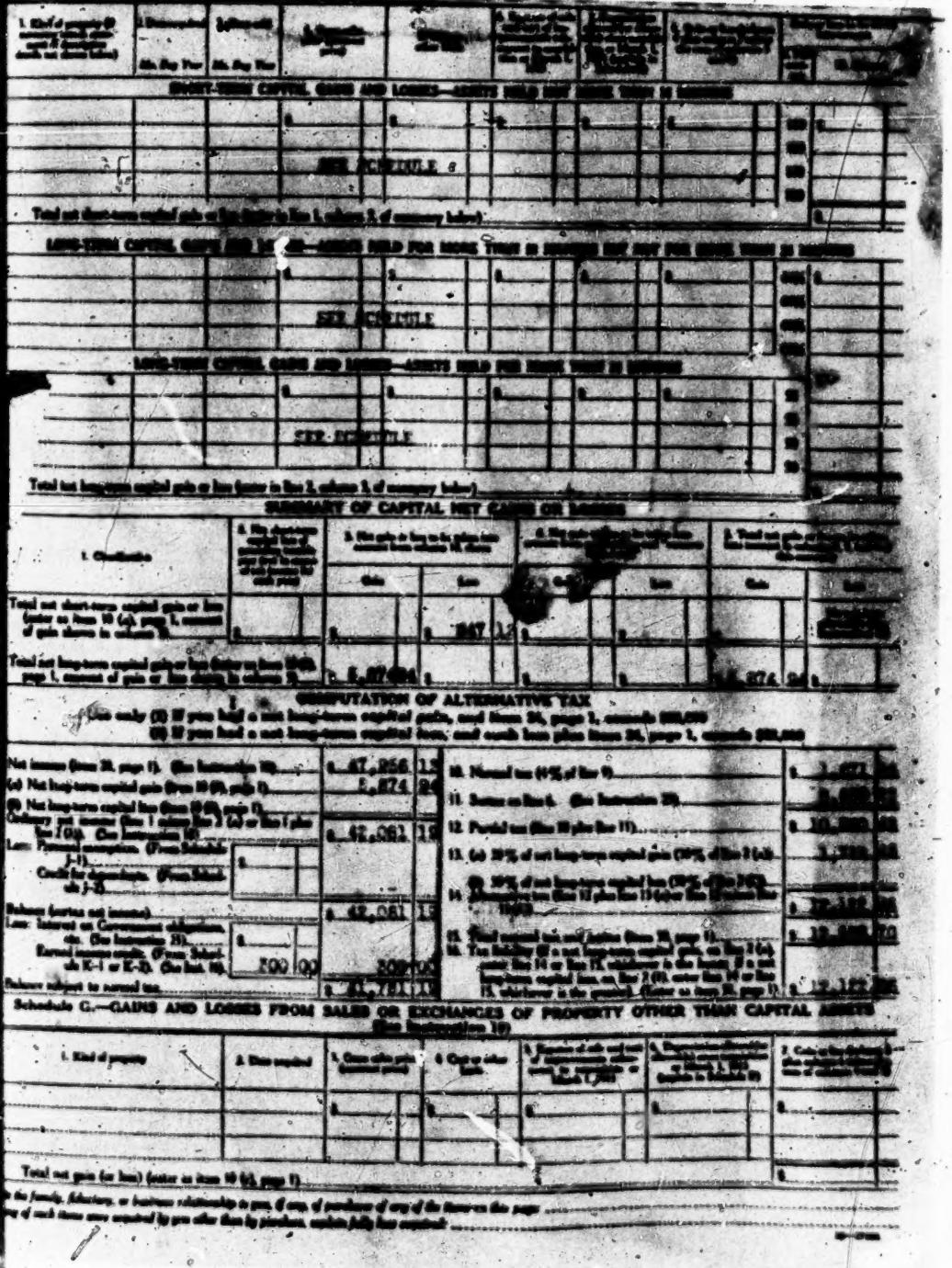
Brooks B. McWilliams,
590 The Arcade,
Cleveland, Ohio.

2-9-42

SCHEDULE D

Description	Date Acquired	Date Sold	Gross Sale Price	Cost	Expense of Sale	Depr.	Net Gain or Loss
LONG TERM CAPITAL GAINS AND LOSSES - ASSETS HELD MORE THAN 18 MONTHS							
2-M Anaconda 4½ %	12-27-39	1-7-40	2,000.00	1,125.00	-	75.00	100 75.00
4-M 61436	12-17-39	1-7-40	4,100.00	4,071.12	-	28.12	100 17.12
LONG TERM CAPITAL GAINS AND LOSSES - ASSETS HELD MORE THAN 18 MONTHS							
500 Int. Nickel	8-28-39	11-27-40	5,013.38	8,664.24	10.00	6,664.76	66-2/3 1,339.86
LONG TERM CAPITAL GAINS AND LOSSES - ASSETS HELD MORE THAN 18 MONTHS							
[illegible] Co.	7-1-38	1-2-40	2,000.00	1.00	3.00	2,000.00	50 1,501.50
Anaconda 4½%CD	10-18-37	1-7-40	6,100.00	6,028.34	-	46.34	50 35.17
[illegible] 4½%CL	1-25-37	11-27-40	10,000.00	10,014.14	-	14.14	50 17.07
[illegible] Door Co.	7-1-38	11-[illegible]	[illegible]	10.41	150.00	[illegible]	50 [illegible]
[illegible] Louis	8-18-39						
	2-4-37	12/12/40	8,000.00	10,000.37	[illegible]	1,000.00	50 837.71
[illegible]	1-21-37	11-27-40	8,000.00	9,000.00	-	1,000.00	50 837.67
[illegible]	12-17-37	11-27-40	8,827.61	8,[illegible]	50.00	2,113.64	50 1,056.77
[illegible]	7-18-38	11-27-40	2,000.00	[illegible]	[illegible]	971.31	50 479.16
[illegible]	7-11-38	11-27-40	3,000.00	[illegible]	25.00	1,000.00	50 837.41
[illegible] Republic Steel Corp.	1-21-37	12-24-40	10,000.00	10,011.00	5.00	500.00	50 211.85

Joint Exhibit No. D-4



Joint Exhibit No. D-4

Schedule H.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 12, 14, 15, 16, 17, AND 18

1. Item No.	2. Explanation	3. Amount	4. Item No.	5. Explanation (Continued)	6. Amount
12	Society for Blind	$ 10 00	18	Sales	$
	Musical Arts Assn.	50 00		Personal Property	
	Seeing Eye	50 00		Stock Sales	
	Red Cross	50 00			
	Frontier Nursing Assn.	5 00			
	Anti-Tuberculosis League	5 00			
	Periaw Sanitorium	10 00			

Schedule I.—NONTAXABLE INCOME OTHER THAN INTEREST REPORTED IN SCHEDULE B

1. Source of income	2. Nature of income	3. Amount
		$

Schedule J.—EXPLANATION OF CREDITS CLAIMED IN ITEMS 20 AND 21.

(1) Personal Exemption

Status	Number of persons for whom credit is claimed	Credit claimed
Single, or married and not living with husband or wife		$
Married and living with husband or wife		
Head of family (explain below)		

(2) Credit for Dependents

Name of dependent and relationship	Number of months during which dependent lived in your home		Credit claimed
	Under 6 years	Over 6 years	
			$

Reason for support if over 18 years old

Schedule K.—COMPUTATION OF EARNED INCOME CREDIT.

(1) If your net income is $5,000 or less, use only this part of schedule

Net income (item 20, page 1)	$
Earned income credit (10% of net income, above)	

(2) If your net income is more than $5,000, use only this part of schedule

Earned net income (not more than $14,000)	$ —
Net income (item 20, page 1)	47,258
Earned income credit (10% of earned net income or 10% of net income, above, whichever amount is smaller, but do not allow less than $300)	300

QUESTIONS

1. State your principal occupation or profession: House wife
2. State whether you are a citizen ☒ or a resident alien ☐.
   If you file a return for any prior year? yes. If so, what was the latest year? 1939. To which Collector's office was it sent? Cleveland
4. [illegible] of income or deductions of both husband and wife included in this return? no
5. Name of husband or wife if separate return was made [illegible]
6. (b) Personal exemption, if any, claimed thereon: $2,000
   (c) Collector's office to which it was sent: Cleveland
6. Check whether this return was prepared on the cash ☒ or accrual ☐ basis.
7. Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company as defined by section 501 of the Internal Revenue Code? (Answer "yes" or "no") yes (If answer is "yes," attach statement required by Instruction J.)

AFFIDAVIT. (See Instruction E)

I/we swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me/us and to the best of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and the regulations issued under authority thereof.

Brooks B. McWilliams
(Signature) (See Instruction E)

(Signature)
(If this is a joint return (not made by agent), it must be signed by both husband and wife. It must be sworn to before a proper officer by the person preparing the return. If neither or both prepare the return, it must be sworn to by both spouses.)

Subscribed and sworn to by Brooks B. McWilliams before me this 14th day of March, 1941

Marie McNair
(Signature and title of officer administering oath)

A return made by an agent must be accompanied by power of attorney. (See Instruction E.)

MARIE McNAIR, Notary Public
My commission expires June 11, 1941

AFFIDAVIT. (See Instruction E)

(If this return was prepared for you by some other person, the following affidavit must be executed)

I/we swear (or affirm) that I/we prepared this return for the person or persons named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the tax liability of the person or persons for whom this return has been prepared of which I/we have any knowledge.

Subscribed and sworn to before me this 14th day of March, 1941

Marie McNair
(Signature and title of officer administering oath)

Irma L. Hall
(Signature of person preparing the return)

(Signature of person preparing the return)

(Name of firm or employer, if any)

MARIE McNAIR, Notary Public
My commission expires June 11, 1941

16—17328

JOINT EXHIBIT No. E-5

FORM 1040

UNITED STATES

INDIVIDUAL INCOME TAX RETURN

1941

For Calendar Year 1941

or fiscal year beginning _____, 1941, and ending _____, 1942

To be filed with the Collector of Internal Revenue for your district not later than the 15th day of the third month following the close of your taxable year.

(Auditor's Stamp)

1931
936150
13-Ohio
(Collector's Stamp)

FIRST NAME AND ADDRESS PLAINLY. (See Instruction C)

McWilliams, Brooks B. (Mrs.)

590 Thetreade

Cleveland | Cuyahoga | Ohio

Cash Check M O

INCOME		
1. Salaries and other compensation for personal service, $	$	
2. Dividends	41,454	80
3. Interest on (a) bank deposits, notes, etc., $; (b) corporation bonds, $	2,426	72
4. Interest on Government obligations, etc.: (a) From line (K), Schedule A, $; (b) from line (J), Schedule A, $		
5. Rents and royalties. (See Schedule B)		
6. Annuities		
ITEMS 7, 8, AND 9, BELOW (AND PAGES 3 AND 4) NEED NOT BE CONSIDERED UNLESS YOU HAVE INCOME FOR LOSSES IN ADDITION TO ITEMS ABOVE.		
7. (a) Net short-term gain from sale or exchange of capital assets. (See Schedule D)	-0-	
(b) Net long-term gain (or loss) from sale or exchange of capital assets. (See Schedule D)	15,774	66
(c) Net gain (or loss) from sale or exchange of property other than capital assets. (See Schedule D)		
8. Net profit (or loss) from business or profession. (See Schedule E)		
(State total receipts, from line 1, Schedule H, $)		
9. Income (or loss) from partnerships, fiduciary interests and other income. (See Schedule F)		
10. Total income in items 1 to 9		33,106 56
DEDUCTIONS		
11. Contributions paid. (See Schedule G)	$ 150 00	
12. Interest. (See Schedule G)		
13. Taxes. (See Schedule G)	2,551 56	
14. Losses from fire, storm, shipwreck, or other casualty, or theft. (See Schedule G)		
15. Bad debts. (See Schedule G)		
16. Other deductions authorized by law. (See Schedule G)		
17. Total deductions in items 11 to 16		2,701 56
18. Net income (item 10 minus item 17)		$ 28,404 50

COMPUTATION OF TAX				
19. Net income (item 18 above)		$ 28,404 50	26. Normal tax (4% of item 25)	$ 1,124 21
20. Less: Personal exemption. (See Schedule C-1)	$		27. Surtax on item 22. (See Instruction 27)	$ 8,210 44
21. Credit for dependents. (See Schedule C-2)			28. Total (item 26 plus item 27)	$ 9,334 65
22. Balance (surtax net income)		$ 28,404 50	29. Total tax (See Sec. 14, Schedule F)	$ 10,777 15
23. Less: Item 4 (a) above	$		30. Less: Income tax paid at source	$ 1,442 50
24. Earned income credit. (See Schedule C-3 of U.S.)	800 00	800 00	31.	87 50
25. Balance subject to normal tax		$ 27,604 50	32. Balance of tax (item 29 minus items 30 and 31)	$ 9,247 15

I/We swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me/us and is, to the best of my/our knowledge and belief, a true, correct, and complete return, made in good faith, for the taxable year covered pursuant to the Internal Revenue Code and the regulations issued thereunder thereof.

Subscribed and sworn to by Brooks B. McWilliams

before me this 24 day of February, 1942

Mirle McTeer

Brooks B. McWilliams

(Signature of taxpayer)

If this is a joint return both husband and wife must sign. If husband or wife is absent, he or she must make a return and file it separately.

Joint Exhibit No. E-5

74

SCHEDULE D-1 - SALES OR EXCHANGES OF CAPITAL ASSETS.

ASSETS HELD NOT MORE THAN 18 MONTHS.

Description	Date Acquired	Date Sold	Gross Sales Price	Cost	Expense of Sale	Gain or Loss	Percent	Net Gain or Loss
P-M Jr. Bonds 4½% '50	12-27-39	8-29-41	3,000.00	2,125.52	-	874.48	100	874.48
100 Shs. Amer. T & T	8-14-41	8-21-41	250.00	-0-		250.00	100	250.00
Rattlehouse 3 & 4 Pts.	Sept. '41	Oct. '41	46.49	-0-		46.49	100	46.49
			231.49	23				

ASSETS HELD NOT MORE THAN 18 MONTHS BUT NOT MORE THAN 24 MONTHS.

Kirby-Owen Corp.	9-10-39	8-8-41	8,434.62	12,626.25	70.00	5,721.43	2/3	3,480.95
[illegible] Cont. Co.	12-27-39	7-5-41	18,447.13	18,106.25	8.20	2,861.08	"	1,774.06
[illegible] & Co.	12-15-39	7-5-41	7,617.54	11,011.00	9.20	7,487.16	"	2,728.74
[illegible] Plastic Refrig.	12-14-39	7-8-41	7,[illegible]	9,606.80	70.80	12,204.17	"	1,856.12
[illegible] Corp. 4½% '50	12-27-39	8-11-41	1,010.00	1,068.02	-	58.02	"	38.68
			34,509.11	53,417.04				

ASSETS HELD FOR MORE THAN 24 MONTHS

Youngs.Steel Door	7-1-25	7-2-41	4,832.64	2.10	24.00	4,829.84	50%	2,414.77
Amer. T. & T.	12-16-29	12-16-41	25,247.96	16,716.75	10.00	8,468.77	"	1,734.38
Sherwin-Williams	12-8-29	12-10-41	6,216.26	3,322.25	5.56	2,107.89	"	1,551.95
Liggett & Myers	Sept.'29	12-10-41	25,581.72	19,747.00	11.00	6,188.28	"	2,092.64
10-M Allegheny 5s '44	1-29-37	12-12-41	8,772.84	10,076.64	5.00	1,303.80	"	651.90
			70,653.50	55,864.70				

Brooks P.M.Tillinar,
930 The Arcade,
Cleveland, Ohio.
12-3-42.

J3774 61

11-1-1830

Joint Exhibit No. E-5

Schedule A.—INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See Instruction C) Page 2

1. Obligations taxable	2. Interest received or accrued during the year (see Instructions A and C)	3. Interest included in amount filing this year	4. Amount of obligations entered in column 2, on which interest is excluded	5. Interest on amounts in column 4 (see Instructions A and C)
(a) Treasury Notes, Treasury Bills, and Treasury Certificates of indebtedness issued prior to March 1, 1941	$	$	All	$
(b) Obligations of Federal Farm Mortgage Corporation issued prior to March 1, 1941			All	
(c) Obligations of Home Owners' Loan Corporation issued on or before September 1, 1941			All	
(d) Treasury Notes, Treasury Bills, and Treasury Certificates of indebtedness issued prior to March 1, 1941			All	
(e) United States Savings Bonds and Treasury Bonds issued prior to March 1, 1941			$5,000	$
(f) Obligations of instrumentalities of the United States (other than obligations to be reported in (g) above) issued prior to March 1, 1941			None	
(g) Dividends on share accounts in Federal savings and loan associations				
Total (enter as item 4 (a), page 1)				$

(f) Obligations issued on or after March 1, 1941, by the United States or any agency or instrumentality	Amount owned at end of year	Interest received or accrued during the year (subject to normal tax and surtax)
Total (enter amount of interest as item 4 (f), page 1)	$	$

Schedule B.—INCOME FROM RENTS AND ROYALTIES. (See Instruction B)

1. Kind of property	2. Amount	3. Depreciation or depletion (attach schedule)	4. Repairs (explain below)	5. Other expenses (explain below)	6. Net profit (subtract 3 and 4 and 5 from 2) (enter as item 5, page 1)
	$	$	$	$	$

Explanation of deductions claimed in columns 4 and 5

Schedule C.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 11, 12, 13, 14, 15, AND 16

1. Item No.	2. Explanation	3. Amount
11.	British War Relief	10 00
	Cleveland Orchestra	50 00
	Junior League	5 00
	Seeing Eye	50 00
	Frontier Nursing Assn.	5 00
	Negro Committee	10 00
	Anti-Tuberculosis League	10 00
		140 00

1. Item No. (continued)	2. Explanation (Continued)	3. Amount (Continued)
13.	Sales tax	$ 50 00
	Personal Property	2,170 90
	Stock Sales tax	130 46
		2,351 36

Schedule D.—EXPLANATION OF CREDITS CLAIMED IN ITEMS 20 AND 21. (See Instructions 20 and 21)

(1) Personal Exemptions

Status	Number of months during the year in each status	Credit claimed
Single or married and not living with husband or wife and not head of family		$
Married and living with husband or wife		
Head of family (explain below)		

(2) Credit for Dependents

Name of dependents and relationship	Number of months during the year: Under 18 years old	18 years or over	Credit claimed
			$

Reason for support if 18 years or over

Schedule E.—COMPUTATION OF EARNED INCOME CREDIT. (See Instruction 24)

(1) If your net income is $3,000 or less, use only this part of schedule

Net income (item 18, page 1)	$
Earned income credit (10% of net income above)	

(2) If your net income is more than $3,000, use only this part of schedule

Earned net income (not more than $14,000)	$
Net income (item 18, page 1)	
Earned income credit (10% of earned net income or 10% of net income above, whichever amount is smaller, but do not enter less than $400)	

QUESTIONS

1. State your principal occupation or profession: House-wife
2. Name and address of employer
3. Did you file a return for any prior year? Yes. If so, what was the latest year? 1940. To which Collector's office was it sent? Cleveland, Ohio
4. If separate return was made for the current year, state: (a) Name of husband or wife [illegible] (b) Personal exemption, if any, claimed therein $ [illegible] (c) Collector's office to which it was sent Cleveland
5. Check whether the return was prepared on the cash ☒ or accrual ☐ basis.
6. If return on cash basis, do you elect, under section 42, to include as income received in the current year the increase for current and prior years in the redemption price of noninterest-bearing obligations issued at a discount? [illegible] If so, attach statement listing obligations owned and computation of the accrued income. Report such income as interest in item 3 or 4, page 1, whichever applicable.
7. Did you receive during the taxable year any nontaxable income other than interest reported in Schedule A (see Instruction C)? If so, attach schedule showing source, nature, and amount of such income.
8. Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company as defined by section 501 of the Internal Revenue Code? If so, attach statement required by Instruction I.

Joint Exhibit No. E-5

DETACH PAGES 3 AND 4 IF NOT USED

Schedule F—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS (See Instruction 7)

1. Kind of property (If necessary, attach statement of descriptive details not shown below)	2. Date acquired Mo. Day Year	3. Date sold Mo. Day Year	4. Gross sales price (contract price)	5. Cost or other basis	6. Expense of sale and cost of improvements, subsequent to acquisition or March 1, 1913 (explain in Schedule J)	7. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (explain in Schedule J)	8. Gain or loss (if gross sales price, the sum of columns 5 and 7 is more than column 4)	Gain or loss to be taken into account: 9. Per cent age	10. Amount
SHORT-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD NOT MORE THAN 18 MONTHS									
			$	$	$	$	$	100	$
								100	
								100	
								100	
Total net short-term capital gain or loss (enter in line 1, column 3, of summary below)									$
LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 18 MONTHS BUT NOT FOR MORE THAN 24 MONTHS									
			$	$	$	$	$	66⅔	$
See detail attached								66⅔	
								66⅔	
LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 24 MONTHS									
			$	$	$	$	$	50	
								50	
								50	
								50	
Total net long-term capital gain or loss (enter in line 2, column 3, of summary below)									$

SUMMARY OF NET CAPITAL GAINS OR LOSSES

1. Classification	2. Net short-term capital loss of preceding taxable year (not in excess of net income for such year)	3. Net gain or loss to be taken into account from column 10, above		4. Net gain or loss to be taken into account from partnerships and estates or trust funds		5. Total net gain or loss to be taken into account in column 2, 3, and 4 on this summary	
		Gain	Loss	Gain	Loss	Gain	Loss
1. Total net short-term capital gain or loss (enter as item 7 (a), page 1, amount of gain shown in column 5)	$ 247	$	$ 180 96	$	$	$	No net loss allowable (see Instruction 7)
2. Total net long-term capital gain or loss (enter as item 7 (f), page 1, amount of gain or loss shown in column 5)	$	$	$ 13,774 86	$	$	$	$ 13,774 86

COMPUTATION OF ALTERNATIVE TAX

Use only: If you had a net long-term capital gain, and item 22, page 1, exceeds $12,000, or If you had a net long-term capital loss, and such loss plus item 22, page 1, exceeds $12,000

1. Net income (item 18, page 1). (See Instruction 7)	$ 28,405 80	10. Normal tax (4% of line 9)	$ 1,672 19
2. (a) Net long-term capital gain (item 7 (f), page 1)	13,774 86	11. Surtax on line 6. (See Instruction 7)	15,118 93
(b) Net long-term capital loss (item 7 (f), page 1)		12. Partial tax (line 10 plus line 11)	$ 16,790 12
3. Ordinary net income (line 1 minus line 2 (a) or line 1 plus line 2 (b)). (See Instruction 7)	$ 42,179 66	13. (a) 30% of net long-term capital gain (30% of line 2 (a))	
4. Less: Personal exemption (From Schedule D-1)	$	(b) 30% of net long-term capital loss (30% of line 2 (b))	
5. Credit for dependents. (From Schedule D-2)	-0-	14. Alternative tax (line 12 plus line 13 (a) or line 12 minus line 13 (b))	$ 12,858 12
6. Balance (taxable net income)	$ 42,179 66	15. Total normal tax and surtax (item 28, page 1)	$ 9,324 00
7. Less: Item 4 (b), page 1	$	16. Tax liability (if a net long-term capital gain, on line 2 (a), enter line 14 or line 15, whichever is the lower; if a net long-term capital loss, on line 2 (b), enter line 14 or line 15, whichever is the greater). (Enter as item 29, page 1)	$ 12,858 12
8. Earned income credit. (From Schedule R-1 or R-2). (See Instr. 7)	500 00		500 00
9. Balance subject to normal tax	$ 41,679 66		

Schedule G—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS (See Instruction 7)

1. Kind of property	2. Date acquired	3. Gross sales price (contract price)	4. Cost or other basis	5. Expense of sale and cost of improvements, subsequent to acquisition or March 1, 1913	6. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (explain in Schedule J)	7. Gain or loss (column 3 plus column 6 minus the sum of columns 4 and 5)
		$	$	$	$	$
Total net gain (or loss) (enter as item 7 (d), page 1)						$

State the family, fiduciary, or business relationship to you, if any, of purchaser of any of the items on this page.
If any of such items were acquired by you other than by purchase, explain fully how acquired. Youngstown Steel Door Stock acquired by gift from husband, John P. McWilliams

Joint Exhibit No. E-5

Schedule H.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (See Instruction E)

(a) Principal business or profession ... (b) Principal product or service ... (c) Business code number ...

(d) Number of places of business ... (e) Method of accounting: (1) Cash (2) Accrual (3) Other (specify) ...

(f) Did you "materially participate" in the operation of this business during 1954? (If "No," see instruction for limitations on losses.) ...

(g) Was there any change in determining quantities, costs, or valuations between opening and closing inventory? (If "Yes," attach explanation.) ...

(h) Was any part of your business conducted on property owned by your spouse? ...

(i) Did you deduct expenses for the business use of your home? ...

(j) Did you file all required Forms 1099? ...

(k) Did you have one or more employees during 1954? ...

(l) Did you have any depreciable property placed in service before 1954? ...

(m) Did you have any depreciable property placed in service after 1953? ...

(n) Did you have any depreciable property placed in service after 1953 for which you did not use the straight-line method? ...

Total receipts ... $

COST OF GOODS SOLD

(Use cost when inventories are not income-determining factor)

2. Inventory at beginning of year	$	
3. Merchandise bought for sale		
4. Labor		
5. Material and supplies		
6. Other costs (explain below)		
7. Total (lines 2 to 6)	$	
8. Less inventory at end of year		
9. Net cost of goods sold (line 7 minus line 8)	$	
10. Gross profit (line 1 minus line 9)	$	

OTHER BUSINESS DEDUCTIONS

11. Salaries and wages not included in "Labor" (do not deduct compensation for yourself)		$
12. Interest on business indebtedness		
13. Taxes on business and business property		
14. Losses (explain below)		
15. Bad debts arising from sales or services		
16. Depreciation, obsolescence, and depletion (explain on Schedule J)		
17. Rent, repairs, and other expenses (itemize below or on separate sheet)		
18. Total of lines 11 to 17		$
19. Total of lines 9 and 18		$
20. Net profit (or loss) (line 1 minus line 19) (enter as item 8, page 1)		$

If this production, manufacture, purchase, or sale of merchandise is an income-producing factor, inventories are required. Enter "C," or "C or M," on line 2 and 6 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.

Explanation of deductions claimed in lines 6, 14, and 17 ...

Schedule I.—INCOME FROM PARTNERSHIPS, FIDUCIARIES, AND OTHER SOURCES

INCOME (OR LOSS) FROM PARTNERSHIPS, SYNDICATES, ETC. (SEE INSTRUCTION F) (PERSONS NAMES AND ADDRESSES)	$
INCOME FROM FIDUCIARIES (PERSONS NAMES AND ADDRESSES)	$
INCOME FROM OTHER SOURCES (STATE NATURE)	$
Total receipts on Schedule I. Enter as item 9, page 1	$

Schedule J.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES F, G, AND H

1. Kind of property (Single assets costing $100 or more must be listed separately)	2. Date acquired	3. Cost or other basis (Do not include land or other nondepreciable property)	4. Assets fully depreciated or sold or disposed of during year	5. Depreciation allowed (or allowable) in prior years	6. Remaining cost or other basis for this computation	7. Estimated life (Enter a percentage, life (years), or explain method)	8. Estimated remaining life (years)	9. Depreciation allowable this year
		$	$	$	$			$

AFFIDAVIT. (See Instruction E)

(If this return was prepared for you by some other person, the following affidavit must be executed)

I (we) (swear (or affirm) that I (we) prepared this return for the person or persons named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the tax liability of the person or persons for whom this return has been prepared of which I (we) have any knowledge.

Subscribed and sworn to before me this 15 day of ..., 194...

(Signature of person preparing the return)

(Signature of person preparing the return)

(Signature and title of officer administering oath)

(Name of firm or employer, if any)

NOTARY PUBLIC

My commission expires ... 19 54

EXCERPTS FROM TRANSCRIPT OF HEARING

(Filed May 3, 1945)

OFFICIAL REPORT OF PROCEEDINGS

BEFORE

THE TAX COURT OF THE UNITED STATES

JOHN P. McWILLIAMS,
ESTATE OF SUSAN P. McWILLIAMS,
BROOKS B. McWILLIAMS,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket Nos. 5945 - 5946 - 5947

Place—Cleveland, Ohio
Date—April 19, 1945
Pages 1-24

* * * * * * * * * *

purchased—through a broker, rather—and are purchased by another member of the same family group,
7 through the same broker at approximately the same time, at approximately the same price, is a sale directly or indirectly between members of a family group, even though different certificates are obtained by the member of the family that does the purchasing.

That, in short, is our case.

Whereupon,

JOHN P. McWILLIAMS,

called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

The Clerk: Tell the reporter your name, please, Mr. Witness.

Testimony of John P. McWilliams

The Witness: John P. McWilliams.

By Mr. Hadden:

Q. What is your business, Mr. McWilliams?

A. I am president of the Youngstown Steel Door Company.

Q. You live here in Cleveland?

A. I do.

Q. What is the name of your wife?

A. Brooks Barlow McWilliams.

Q. And your mother, who is now dead, was Susan P. McWilliams?

8 A. Yes.

Q. How long have you been married?

A. I was married in 1928.

Q. Since you have been married, what duties have you had with respect to your wife's property?

A. I have had entire charge of it.

Q. Does that include investing and re-investing her funds?

A. It does.

Q. And your mother died when?

A. November of 1941.

Q. What was your relationship with your mother, with respect to her business affairs?

A. Well, my mother was an invalid. I had complete charge of the purchase and sale of her securities.

Q. Your mother had substantial property during her life?

A. My mother had an estate of approximately $350,000, as I remember it, at the time of her death.

Q. And at the time that these transactions occurred, which are involved in this litigation, your wife had considerable property?

A. Yes.

Q. And you managed that, and bought and sold, during the years that are involved in these cases?

9 A. Yes.

Q. You have no written power of attorney?

A. No.

Q. But that course of conduct had continued since your marriage, is that correct?

A. Correct.

Q. Now, coming first to Case No. 5946, the Estate of Susan P. McWilliams, Petitioner, the capital loss that has been disallowed by the Commissioner, involved the sale of 100 shares of Eastman Kodak.

Will you just tell the Court what you did with regard to ordering the sale of that stock?

A. I called up my broker, Mr. Allan House of Curtis, House & Company, and asked him to sell the stock.

Q. And at the same time, in the same conversation, did you give him a further order with respect to substantially the same shares?

A. I told him that after that stock had been sold, to buy some for my account.

Q. Did you mention the price at the time you gave the order at which you wanted to buy it?

A. I said I would like to buy it at as near the selling price as we could get.

Q. Now, coming to Case No. 5947, which involves the deficiency in your wife's income tax liabilities for the
10 years 1940 and 1941, it has been stipulated that on certain dates in those two years, substantial amounts of securities were sold through Curtis, House and Company. Will you tell us just how you placed those orders.

A. I called Mr. Allan House of Curtis, House & Company and told him to sell certain securities belonging to Brooks B. McWilliams.

Q. And in the same telephone conversation did you say anything about purchasing substantially the same securities as on your own behalf?

A. I told him that after those sales had been made, to Brooks B. McWilliams, I would like to have purchases made at approximately the same price, as near as possible.

Q. For your own account?

A. For my own account.

Q. Coming now to your own case, Case No. 5945, there are certain sales of securities for your own account in-

volved in this tax deficiency. Will you tell the Court what you stated to Mr. House when you placed those orders?

A. I gave Mr. House an order to sell those securities for my own account.

Q. And in the same conversation, did you give orders to purchase for your wife's account, substantially the same securities?

A. After my own had been sold.

11 Q. In other words, your instructions were to buy them after yours had been sold?

A. That is correct.

Q. At substantially the same price, if possible?

A. That's right.

Q. I would like to ask you whether in these three accounts, after the securities were purchased, if they ever were owned again by the taxpayer who had sold them?

A. I am not sure that I understand your question, but—

Q. Well—go ahead.

A. But it is possible that in the three years passed, that both my wife and I may have purchased some one of the securities that are involved in these cases. I am not—I don't know as to that.

Q. Let me—

A. As far as any immediate repurchase or a sale is concerned, there is nothing of that kind.

Q. Well, let me ask you this question: In your case, the loss of certain securities is involved, and at the time you sold those securities Mrs. McWilliams purchased substantially the same securities. Have you ever purchased from her, or by any other means reacquired in your own estate those securities which she purchased?

12 A. I have not.

Q. And does that apply equally to your mother's case and also to your wife's case?

A. It does.

Q. I wish you would tell the Court the reason for selling the securities in your own case?

A. I did it to establish a tax loss to counter some very

substantial capital gains which had taken place in the same year.

Q. And was that the same reason that Mrs. McWilliams sold securities that are involved in her deficiency?

A. It is.

Q. And the same applies to your mother's case?

A. It is.

Q. You had no aversion toward these securities, you disliked them for no reason?

A. No, that is one reason why I bought them.

Q. You had funds that were available at the time?

A. I did.

Q. And the same thing applied to your wife at the time you sold the securities in your account she had funds available, and had no objection or no dislike for the securities?

A. That is correct.

Q. I wish you would tell the Court whether or not your mother's financial transactions were recorded
13 and the books were kept in connection with her business matters?

A. Well, as far as my wife and myself are concerned, my secretary has presented us each month with a statement of assets and liabilities running back, I think, to about 1932. As far as my mother is concerned, similar statements have been prepared monthly running back to about the time of my father's death in 1936.

Q. Stocks that are owned by your wife stand in her own name?

A. They do.

Q. The same thing applies to yours?

A. They do.

Q. And the securities belonging to each of you are segregated?

A. They are.

Q. The same thing applies to your mother's property when she was living?

A. Well, as I remember it, all of my mother's property was in her own name up to the time of her death, and when sales were made of securities by her, I attached

a signed power of attorney to the stock certificates in making delivery. Since my mother's death, the securities have been put in the name of John P. McWilliams, Trustee, under the will of Susan P. McWilliams, and that is the way they stand now.

14 Q. But, prior to her death, and during the time that the transactions transpired that are involved in litigation here, her property was separately segregated, and the securities that she owned and stocks that she owned, stood in her own name?

A. That is correct.

Q. And each one of you have had separate bank accounts?

A. Yes.

Q. You and your wife have filed separate income tax returns?

A. Yes.

Q. How long has that been the fact?

A. My recollection is ever since we have been married.

Q. Does your wife own securities and property in excess of the amounts involved in these particular transactions that are involved in this lawsuit?

A. Very much in exeess.

Q. And I think you have testified about your mother's estate that at the time she died she had approximately $350,000 of property, and that was substantially her situation at the time this Eastman Kodak stock was sold in 1940?

A. That is correct.

Mr. Hadden: You may have the witness.

Mr. Bloomenthal: There is no cross examination.

Mr. Hadden: Unless the Court has anything.

15 The Court: The Petitioner rests?

Mr. Hadden: Yes.

Mr. Bloomenthal: The Respondent has no cross examination of this witness, but we do have one witness to put on the stand briefly. We will call Mr. Allan C. House.

Whereupon,

ALLAN C. HOUSE,

called as a witness by and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

The Clerk: Will you state your name, please?

The Witness: Allan (spelling) A-l-l-a-n- C. House.

By Mr. Bloomenthal:

Q. Will you state your full name and address and occupation for the record?

A. Allan C. House; I am a member of the firm of Curtis, House & Company, 1201 Union Commerce Building, Cleveland, Ohio.

Q. Mr. House, you are well acquainted, are you not, with Mr. John P. McWilliams, the Petitioner in this case?

A. Yes, sir.

Q. Do you know his wife also?

A. Yes.

16 Q. And did you know his mother also during her life-time?

A. Very slightly.

Q. Were they customers of your firm in 1940 and 1941?

A. Yes.

Q. Do you recall the transaction that Mr. McWilliams testified to with respect to the sale of certain Eastman Kodak stock by his mother in 1940?

A. Yes, I do.

Q. Did you have any conversation with Mr. McWilliams at or prior to the time that transaction occufred?

A. At or prior, you ask?

Q. Yes.

A. Only at the time.

Q. At the time? Will you tell the Judge what the conversation was, and where it took place?

A. The conversation is virtually—I say virtually, what Mr. McWilliams stated in court. He telephoned me and gave me instructions to sell 100 shares of Eastman Kodak.

Q. And did he say anything to you about the price?

A. Yes.

Q. And what did he say?

A. Following the order to sell 100 Eastman Kodak, to purchase, for another account, 100 shares, at the same price, if possible, or near that price, as the price
17 to which it was sold.

Q. Well, did he indicate to you that the transaction was to be,—that the sales were to be consummated even if it was impossible to purchase the other shares?

A. No, nothing was said.

Q. I mean the same shares?

A. No, nothing was said about that.

Q. Did he tell you—

A. If I understand you correctly.

Q. Well, what I mean to say is: Were you instructed to carry out the sale of the securities on behalf of Susan P. McWilliams regardless of whether it would be possible to buy the same securities at approximately the same price for John P. McWilliams?

A. No, there was no restrictions put on the sale.

Q. Did he tell you how soon he wanted the other part of the transaction to be finished?

A. No.

Q. He did tell you that the same was to establish a tax loss, did he not?

A. That's right.

Q. And, as a matter of fact, the purchase of 100 shares of Eastman Kodak on his behalf was consummated almost immediately after the sale?
18 A. I don't know that. I mean—

Q. You don't recall that?

A. When you say almost immediately—

Q. Well, within a very short time?

A. I think it was, I assume it was, for—I say that, for it is reasonable it could be. I don't know the exact time or date of the purchase.

Q. Do you recall who handled both the purchase and the sale on behalf of your firm in New York?

A. No.

Q. I mean the brokerage house in New York?

A. Our correspondent, Clark Dodge Company.

Q. Did you personally give them any instructions about the transaction?

A. I did.

Q. Will you tell what they were?

A. The instructions were to sell 100 Eastman Kodak; after the sale, purchase 100 Eastman Kodak at the same price, if possible, if not as near as possible. Furthermore, I telephoned the order. I am reminded of ~~that by~~ a memorandum on a slip.

Q. You have a memorandum that you made at the time?

A. Yes.

Q. And that is what you are using now to refresh your recollection?

A. Yes. For the reason that I wanted to make
19 it known to our correspondent this was for tax sale, and consequently a complete change of ownership, and so forth.

Q. Did you specify that they were to arrange for the receipt of different securities—that is, for different certificate numbers for the purchaser?

A. I beg your pardon, I didn't get that.

Q. I say, did you arrange for the purchaser to receive different security numbers—different certificate numbers rather than the securities which were being sold?

A. Well, I didn't arrange. I simply stipulated that this was for tax purposes, and in consequence, of course, a complete change of ownership, change of certificates and independent funds, and such features as pertaining to a tax sale.

Q. And, in general, did the same arrangement prevail with respect to the sales and purchases that you handled for Mr. McWilliams and his wife in 1940 and 1941?

A. That is correct.

Q. And was there any feature about those sales that was different than the preceding sale?

A. No, the conditions were similar.

Q. And you made a memorandum of all these transactions at the time they occurred, did you not?

A. As they appeared on the buy-and-sell tickets.

Q. Mr. House, it has been agreed by the parties
20 that the securities involved in this case were sold to or bought from various brokers in New York, that part of the transaction was all handled by your New York correspondent, wasn't it?

A. That is correct.

Q. And you had nothing to do with it?

A. That is correct.

Q. As far as you were concerned, they could have all been sold by the same broker by your New York correspondent, and bought by the same broker, so long as they were different securities?

A. So far as I am concerned?

Q. Yes, I mean so far as any instructions you gave them?

A. Will you repeat that, please?

Q. Well, maybe I can simplify it. It means this: You emphasized in your instructions to your New York correspondent that you wanted the thing to result in a complete exchange of certificates?

A. That is correct.

Q. And you didn't care who bought—

A. That is correct.

Q. (Continuing) —the certificates?

A. That is correct.

Q. Or from whom they purchased them?

21 A. And I might say you will find, no doubt, in the office of the Clark Dodge and Company the evidence giving the names of the brokers on both sides of the transaction.

Q. I see.

I think that is all.

Mr. Hadden: That is all.

The Court: Were the certificates that were delivered to you by Mr. McWilliams in his name, in the name of his wife and the name of his mother?

The Witness: That I can't answer, sir, because I didn't see them.

The Court: Well, they passed through your house?

The Witness: Yes, sir.

The Court: They were delivered to you?

The Witness: Yes, sir, but I didn't see the actual certificates.

The Court: In purchasing securities, were they simply purchased in street names, or were they actually transferred to Mr. McWilliams, his wife and his mother?

The Witness: As the purchases were made, the instructions were given us that the securities should be bought on in those respective names. I think I am correct in that.

Mr. Bloomenthal: I just merely want to have the record show, Mr. House, you appear here in response
22 to a subpoena served upon you on behalf of the Commissioner of Internal Revenue?

A. That is correct.

Mr. Bloomenthal: That is all.

The Court: Cross examine?

Mr. Hadden: No, but I would like to recall Mr. McWilliams, just to clear up that question which the Court asked.

Whereupon,

JOHN P. McWILLIAMS,

recalled as a witness for and on behalf of the Petitioners, having been previously duly sworn, resumed the stand and was examined and testified further as follows:

DIRECT EXAMINATION—(Continued).

By Mr. Hadden:

Q. Will you tell the Court, if you know, in whose names the certificates stood when you made delivery to Curtis, House & Company, for the sale for the account of your wife, Brooks B. McWilliams?

A. They were in the name of Brooks B. McWilliams.

Q. And the securities that were delivered by sale in your own account were in whose name?

A. John P. McWilliams.

Q. And for your mother's account?

23 A. Was this before or after my mother's death?

Q. Before.

A. Susan P. McWilliams, and I think, possibly in one or two cases, she handled some securities in the name of

Susan P. N. McWilliams, I don't recall what the Eastman Kodak Stock was listed in, but I never hold any securities in street name.

Q. And when the securities were purchased on the New York Stock Exchange for your wife's account in the transactions here involved, did you receive certificates or did she receive certificates in her name?

A. She did.

Q. And in your account, did you receive certificates in your name?

A. I did.

Mr. Hadden: That is all.

Mr. Bloomenthal: That is all.

(Witness excused.)

. . . . . .

DESIGNATION OF CONTENTS OF RECORD ON REVIEW

(Filed March 22, 1946)

To the Clerk of The Tax Court of the United States:

Now Comes the Commissioner of Internal Revenue, the petitioner on review herein, by and through his attorneys, Sewall Key, Acting Assistant Attorney General, and J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for the purpose of the review which he, the said petitioner on review, has heretofore taken to the United States Circuit Court of Appeals for the Sixth Circuit, hereby designates for inclusion in the record on review the following:

1. Docket entries of the proceedings before the Tax Court.
2. Pleadings:
   (a) Petition, including annexed copy of deficiency notice,
   (b) Answer.

3. Findings of fact and opinion of the Tax Court promulgated August 20, 1945.
4. Decision entered August 20, 1945.
5. Petition for review and notices of filing petition for review.
6. Stipulation of facts.
7. Testimony of witnesses John P. McWilliams and Allan C. House, contained on pages 7 to 23, inclusive, of official report of proceedings had before the Tax Court on April 19, 1945.
8. Statement of Points.
9. Order of Court extending time for filing record to April 15, 1946 (not included in record).
10. This designation.

WHEREFORE, it is requested that copies of the record as above designated be prepared and transmitted to the United States Circuit Court of Appeals for the Sixth Circuit in accordance with the rules of said Court.

(Signed) SEWALL KEY CAR
Acting Assistant Attorney General,

(Signed) J. P. WENCHEL, CAR
Chief Counsel,
Bureau of Internal Revenue,
Attorneys for Petitioner on Review.

Statement of Service:

A copy of this designation of contents of record on review was mailed to John A. Hadden, Esq., 1882 Union Commerce Building, Cleveland 14, Ohio, attorney for respondent on review, on March 22, 1946.

(Signed) CHAS. E. LOWERY,
Special Attorney,
Bureau of Internal Revenue.

CERTIFICATE

I, Robert C. Tracy, acting clerk of The Tax Court of the United States do hereby certify that the foregoing pages, 1 to 67, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In Testimony Whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 4th day of April, 1946.

Robert C. Tracy,
Acting Clerk,
The Tax Court of the United States.

(SEAL)

ORDER ENLARGING TIME

On motion of counsel for the petitioner, it is

Ordered that the time for preparation, transmission and delivery of the record *sur* petition for review of the above entitled proceeding in the United States Circuit Court of Appeals for the Sixth Circuit is extended to February 14, 1946.

(Signed) Bolon B. Turner,
Presiding Judge.

Dated: Washington, D. C.
December 11, 1945.

Now: April 4, 1946, the foregoing order is certified from the record as a true copy.

(SEAL)

Robert C. Tracy,
Acting Clerk.

ORDER

(Filed In The Tax Court of the United States
February 11, 1946)

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SIXTH CIRCUIT

COMMISSIONER OF INTERNAL REVENUE, *Petitioner on Review,* vs. JOHN P. McWILLIAMS, *Respondent on Review.*	T. C. Docket No. 5945
COMMISSIONER OF INTERNAL REVENUE, *Petitioner on Review,* vs. ESTATE OF SUSAN P. McWILLIAMS, DEC'D., JOHN P. McWILLIAMS, EXECUTOR, *Respondent on Review.*	T. C. Docket No. 5946
COMMISSIONER OF INTERNAL REVENUE, *Petitioner on Review,* vs. BROOKS B. McWILLIAMS, *Respondent on Review.*	T. C. Docket No. 5947

(Filed February 7, 1946)

Before: HICKS, SIMONS and MARTIN, JJ.

FOR CAUSE SHOWN, IT IS ORDERED that the time within which to file the record on review in the above-entitled causes with this Court be, and the same is, extended to and including April 15, 1946.

IT IS FURTHER ORDERED, that the Clerk of this Court is directed to transmit to the Clerk of The Tax Court of the United States a certified copy of this order.

Approved for Entry:

(s) XEN HICKS, *Judge*,
United States Circuit Court
of Appeals for the Sixth Circuit.

A true copy
Attest: (s) J. W. MENZIES, *Clerk*,
U. S. Circuit Court of Appeals,
Sixth Circuit.

(SEAL)

Now: April 4, 1946, the foregoing order is certified from the record as a true copy.

ROBERT C. TRACY,
Acting Clerk.

(SEAL)

STIPULATION

(Filed May 3, 1946)

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SIXTH CIRCUIT

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, vs. JOHN P. McWILLIAMS, *Respondent.*	No. 10,240
COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, vs. ESTATE OF SUSAN P. McWILLIAMS, DEC'D., *Respondent.*	No. 10,241
COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, vs. BROOKS B. McWILLIAMS, *Respondent.*	No. 10,242

Whereas the above-entitled cases present the same question and were consolidated for hearing and opinion before the Tax Court of the United States; and whereas the pleadings, statement of evidence and petition for review in each case are substantially the same;

It is hereby stipulated by and between the parties, through their respective attorneys, that, subject to the approval of this Court, the above-entitled cases shall be consolidated for purposes of printing the record on appeal, briefing, and hearing; and

It is further stipulated that the consolidated printed record on review shall omit duplicatory documents and shall consist of all of the certified transcript sur petition for review in No. 10,240, together with the Stipulations of Facts in Nos. 10,241 and 10,242; and that the remaining portions of the certified transcripts sur petitions for review in Nos. 10,241 and 10,242 shall be considered as having the same force and effect as if separate printed records had been filed in each case.

SEWALL KEY,
Acting Assistant Attorney General,
Counsel for Petitioner.

JNO. A. HADDEN,
Counsel for Respondents.

APPROVED:
(Signed) XEN HICKS,
Circuit Judge.

TRANSCRIPT OF PROCEEDINGS FOR CERTIORARI APPLICATION

CAUSES ARGUED AND SUBMITTED

(October 17, 1946)

(Before: Allen, Martin and Miller, *JJ.*)

This cause is argued by Berryman Green for Petitioner and by John A. Hadden for Respondent and is submitted to the court.

The case of Commissioner of Internal Revenue v. John P. McWilliams, No. 10,240, being called for argument, counsel in open court, pursuant to oral stipulation, agree that any order entered therein shall also be entered in this case, and the finding in said case No. 10,240 shall be controlling and determinative herein.

JUDGMENT

(No. 10,240)

(Entered December 2, 1946)

On petition to review decision of the Tax Court of the United States.

This cause came on to be heard on the transcript of the record from the Tax Court of the United States, and was argued by counsel.

On Consideration Whereof, It is now ordered, adjudged and decreed by this Court that the decision of the Tax Court is reversed, and the case is remanded for further proceedings in accordance with the opinion of this Court.

JUDGMENT

(No. 10,241)

(Entered December 2, 1946)

On petition to review decision of the Tax Court of the United States.

This cause came on to be heard on the transcript of the record from the Tax Court of the United States, and was argued by counsel.

On Consideration Whereof, It is now ordered, adjudged and decreed by this Court that the decision of the Tax Court is reversed, and the case is remanded for further proceedings in accordance with the opinion of this Court.

JUDGMENT

(No. 10,242)

(Entered December 2, 1946)

On petition to review decision of the Tax Court of the United States.

This cause came on to be heard on the transcript of the record from the Tax Court of the United States, and was argued by counsel.

On Consideration Whereof, It is now ordered, adjudged and decreed by this Court that the decision of the Tax Court is reversed, and the case is remanded for further proceedings in accordance with the opinion of this Court.

OPINION

(Filed December 2, 1946)

Nos. 10240, 10241, 10242

UNITED STATES CIRCUIT COURT OF APPEALS
SIXTH CIRCUIT

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,
No. 10240 v.
JOHN P. McWILLIAMS,
Respondent.

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,
No. 10241 v.
ESTATE OF SUSAN P. McWILLIAMS, Deceased, John P. McWilliams, Executor,
Respondent.

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,
No. 10242 v.
BROOKS B. McWILLIAMS,
Respondent.

On Petitions to Review Decisions of the Tax Court of the United States.

Decided December 2, 1946.

Before ALLEN, MARTIN and MILLER, Circuit Judges.

ALLEN, Circuit Judge. These petitions for review were consolidated for hearing before the Tax Court of the United States and in this court. They involve deficiencies in income tax assessed against John P. McWilliams for the year 1941 in the amount of $7,110.33, of $296.75 for the year 1940 against the estate of Susan P. McWilliams, and of $1,845.52 and $4,184.07 for the years 1940 and 1941 respectively against Brooks B. McWilliams.

John P. McWilliams and Brooks B. McWilliams are residents of Cleveland, Ohio, and are husband and wife. Susan P. McWilliams, deceased, was the mother of John P. McWilliams, who during the period in question was the executor of her estate.

In 1940 and 1941 John P. McWilliams bought and sold a considerable number of valuable securities for his own and his wife's account, and also for his mother's account until her death. He had managed the property of his wife and mother for a number of years. Most of the transactions involved were sales during the taxable years, made by John P. McWilliams for his individual account and for his wife's account. At the time McWilliams placed the orders for sale for his individual account he instructed his brokers to purchase a like number of the same shares at as nearly the same price as possible for the account of his wife. In giving the orders to sell shares for his wife's account he instructed his brokers to purchase a like number of the same shares for his individual account. In each instance the broker was told that the sale was for the purpose of establishing a tax loss. The instructions were carried out, and new certificates bearing different numbers from those sold were issued to the taxpayers. All of the securities were sold through a Cleveland stock broker, and executed in the regular manner on the New York Stock Exchange. The purchasers of the securities were unknown to the taxpayers.

Under substantially the same circumstances as those described above McWilliams in 1940 sold certain shares of stock for the account of his mother, and on the same day purchased a like number of shares of the same stock for his individual account.

A long-term capital loss on these sales was claimed by McWilliams amounting to $21,276.53 in 1941, and by his wife, amounting to $5,592.49 in 1940, and $13,946.95 in 1941. A similar loss in the amount of $1,755.79 was claimed by Susan P. McWilliams. All of these deductions were disallowed by the Commissioner as being prohibited by § 24(b), I. R. C., which so far as material reads as follows:

> "(b) Losses from sales or exchanges of property.
>
> (1) Losses disallowed. In computing net income no deduction shall in any case be allowed in respect of losses from sales or exchanges of property, directly or indirectly—
>
> (A) Between members of a family, as defined in paragraph (2) (D) . . ."

The Tax Court allowed the deductions upon the authority of *Commissioner* v. *Ickelheimer*, 132 Fed. (2d) 660 (C. C. A. 2).

The narrow question involved is the meaning of the words in the statute, "directly or indirectly . . . Between members of a family, . . ." This is a question of law which this court is to decide without reference to the findings of fact or the inferences of the Tax Court. *Trust of Bingham* v. *Commissioner*, 325 U. S. 365, 371. The Tax Court held that the sales were not between the members of a family because the stocks were purchased by third parties unknown to the taxpayers.

We think the decision of the Tax Court was erroneous, and that the sales clearly were indirect sales between members of the same family. The statute must be construed to carry out its purpose. *Griffiths* v. *Commissioner*, 308 U. S. 355, 357; *Helvering* v. *Clifford*, 309 U. S. 331, 334. It must be read in the light of the mischief to be corrected and the end to be attained. *National Labor Relations Board* v. *Hearst Publications, Inc.*, 322 U. S. 111, 124.

The purpose of the legislation which first appeared in the Revenue Act of 1934 was the prohibition of deductions for losses from sales between members of a family. The preliminary subcommittee report of the House Ways and Means Committee on Tax Avoidance, 73d Cong., 2d Sess., p. 15, stated:

> "Many instances have been brought to light where transactions have taken place for the sole purpose of taking a loss for income-tax purposes. It is believed that the recommendation of the subcommittee, if followed, will effectually close this opportunity for tax avoidance."

The report of the full Ways and Means Committee (H. Rep. No. 704, 73d Cong., 2d Sess., p. 23) stated as to the purpose of this section that "Experience shows that the practice of creating losses through transactions between members of a family and close corporations has been frequently utilized for avoiding the income tax. It is believed that the proposed change will operate to close this loophole of tax avoidance."

If losses from these sales are permitted to be deducted, the purpose of the statute will be frustrated. These sales were admittedly for the purpose of establishing tax losses, and the broker was so informed. There was no other purpose in the transaction. None of the taxpayers intended to part with the investment, for the broker was instructed

to repurchase a like number of shares in each instance, at as nearly the same price as possible. It is significant, as expressive of the taxpayer's intention, that the broker was not instructed that the sales were to be consummated even if it should prove impossible to purchase like shares. Considered as a whole, the transactions were agreements to sell between members of the same family; and fairly covered by the phrase of the statute, "directly or indirectly . . . Between members of a family, . . ."

Sales of stock and simultaneous repurchase through third parties do not establish a deductible loss. *Esperson* v. *Commissioner*, 49 Fed. (2d) 259, 260 (C. C. A. 5), cert. denied, 284 U. S. 658. Cf. *Schoenberg* v. *Commissioner*, 77 Fed. (2d) 446 (C. C. A. 8), cert. denied, 296 U. S. 586; *Du Pont* v. *Commissioner*, 118 Fed. (2d) 544 (C. C. A. 3), cert. denied, 314 U. S. 623.

The taxpayers attempt to distinguish these cases by pointing out that in each case the taxpayer who sold the securities reacquired them. It is true that the seller and the buyer in the instant cases were not identical; but the husband and son was the agent for his wife and mother, each of whom had independent and substantial estates. He had, as he testified, "entire charge" of their affairs. He acted for all three taxpayers. He decided to sell his own stocks, and decided as his wife's agent to buy back the identical number of shares of the same stock at the same price, so far as possible. The result was that shares of the same denomination and value, and in the same amount, were in every case on the same day acquired by members of the family group.

No material change was made in the property rights held by the broker for the taxpayers, for a certificate for the same number of shares, although printed upon different paper and bearing a different number, represents precisely the same kind and value of property as does another certificate for a like number of shares of stock in the same corporation. *Richardson* v. *Shaw*, 209 U. S. 365, 378; *Gorman* v. *Littlefield, Trustee*, 229 U. S. 19, 23.

To consider this an arm's length transaction is to treat the wife and mother as complete strangers; "to let mere formalism obscure the normal consequences of family solidarity; and to force concepts of ownership to be fashioned out of legal niceties which may have little or no significance in such household arrangements." *Helvering* v. *Clifford*, supra, 336, 337. In each instance the conclusion of the transaction was that the parties were in the same position as if they had dealt directly with each other as buyer and seller.

In *Commissioner* v. *Ickelheimer*, supra, upon which the Tax Court based its decision herein, the decision was by a divided court in the Tax Court, and was affirmed by a divided court, Judge Learned Hand dissenting.

The instant cases are stronger on the facts in favor of the Commissioner than the *Ickelheimer* case, for there the purchase was delayed for a day or two, while here the orders to sell and the orders to purchase were placed at the same time and through the same broker, and consummated on the same day. But we do not ground our decision on this variation in the facts. We think that the dissenting opinion in the *Ickelheimer* case presents a better view of the purpose of the congressional enactment than the majority decision, and agree with Judge Learned Hand that the allowance of such deductions ignores the meaning of the word "indirectly" in the statute and frustrates the congressional purpose. The statute covers transactions "by which, in accordance with a preexisting design, property passes by whatever combination of moves, at a substantially unchanged price" from one member of the family to another. (*Commissioner* v. *Ickelheimer*, supra, dissenting opinion, p. 662.)

The decision of the Tax Court is reversed, and the case is remanded for further proceedings in accordance with this opinion.

MILLER, Circuit Judge, dissenting.

In the recent decision in *Commissioner* v. *Tower*, decided February 25, 1946, — U. S. —, the Supreme Court restated and reaffirmed the rule of many decades in stating " 'The legal right of a taxpayer to decrease the amount of what would otherwise be his taxes, or altogether avoid them, by means which the law permits, can not be doubted.' *Gregory* v. *Helvering*, 293 U. S. 465, 469. We do not reject that principle." In my opinion, the transactions here involved fall within that rule. The sale by the taxpayer in each instance was an actual, bona fide sale on the open market between a seller and a buyer dealing at arm's length. The buyer was not a member of the taxpayer's family, was in fact unknown to the seller, and had no obligation, agreement or understanding in any shape or form to resell or transfer the securities so purchased to any member of the seller's family or to anyone. He paid for them out of his own funds. The record shows no resale by the purchaser of the securities so purchased. Under such circumstances the taxpayer did not sell either directly or indirectly to a member of

his family. He sold to a stranger. The transaction was a completed one and terminated at that point. It resulted in a deductible loss for income tax purposes. What another member of the taxpayer's family did in an entirely separate transaction with a different unknown stranger, again dealing at arm's length in the open market, does not, in my opinion, merge the two transactions into one or change the legal aspect of the completed sale on the part of the first taxpayer. Unless we are to consider the income of the several members of a family group as a unit for income tax purposes, each transaction is a separate one for each individual taxpayer. Congress has not yet enacted legislation merging such individual incomes, though several times proposed. The motive of tax avoidance does not take the place of such legislation. I am of the opinion that the ruling of the Tax Court should be affirmed. *Commissioner* v. *Ickelheimer*, 132 Fed. (2d) 660; *Dobson* v. *Commissioner*, 320 U. S. 489; *John Kelley Company* v. *Commissioner*, 326 U. S. 521.

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SIXTH CIRCUIT

I, J. W. Menzies, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of the record and proceedings in the cases of Commissioner of Internal Revenue vs. John P. McWilliams—No. 10,240, Estate of Susan P. McWilliams, deceased—No. 10,241, Brooks B. McWilliams—No. 10,242, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 13th day of December, A. D. 1946.

J. W. Menzies,

(Seal) *Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.*

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. 945

ORDER ALLOWING CERTIORARI—Filed March 3, 1947

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Burton took no part in the consideration or decision of this application.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. 946

ORDER ALLOWING CERTIORARI—Filed March 3, 1947

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Burton took no part in the consideration or decision of this application.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. 947

ORDER ALLOWING CERTIORARI—Filed March 3, 1947

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Burton took no part in the consideration or decision of this application.

FILE COPY

In the Supreme Court of the United States

OCTOBER TERM, 1946.

JOHN P. McWILLIAMS,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
No. 945

ESTATE OF SUSAN P. McWILLIAMS,
Deceased,
JOHN P. McWILLIAMS, Executor,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
No. 946

BROOKS B. McWILLIAMS,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
No. 947

PETITION FOR WRITS OF CERTIORARI
To the United States Circuit Court of Appeals For the Sixth Circuit, and
BRIEF IN SUPPORT OF PETITION.

JOHN A. HADDEN,
QUENTIN ALEXANDER,
1882 Union Commerce Building,
Cleveland 14, Ohio,
Telephone—Main 2905,
Counsel for Petitioners.

John S. Beard Jr.

THE GATES LEGAL PUBLISHING CO. CLEVELAND, OHIO—MAIN 5647

INDEX.

PETITION FOR WRITS OF CERTIORARI 1

Jurisdiction of the Court 2

Statute Involved 2

Questions Presented 2

Statement of the Matter Involved 3

Docket No. 5945—John P. McWilliams (Year 1941) 4

Docket No. 5947—Brooks B. McWilliams (Year 1940) 4

Docket No. 5947—Brooks B. McWilliams (Year 1941) 4

Docket 5946—Estate of Susan P. McWilliams, John P. McWilliams, Executor (Year 1940) 4

Reason Relied Upon for the Allowance of this Writ 6

Prayer 6

BRIEF OF PETITIONERS IN SUPPORT OF PETITION FOR WRITS OF CERTIORARI 7

Opinions Below 7

Jurisdiction 7

Statement of the Case 8

Assignment of Errors 8

Argument:

The Circuit Court erred in reversing a finding of the Tax Court supported by substantial evidence, contrary to the rule first laid down by this Court in the *Dobson* case, and resulting in a conflict with the *Ickelheimer* case 8

Conclusion 13

AUTHORITIES CITED

Cases.

Boehm v. Commissioner, 326 U. S. 287 ..... 6, 13

Commissioner v. Flowers, 326 U. S. 465 ..... 6, 13

Commissioner v. Ickelheimer, 132 Fed. 2d 660 ..... 6, 8, 10, 11, 12, 13

Commissioner v. Kohn, 1946 C. C. H. Par. 9393 .. 10, 11, 12

Commissioner v. Scottish American Company, 323 U. S. 119 ..... 6, 13

Dobson v. Commissioner, 320 U. S. 489 ..... 2, 6, 8, 9, 10, 11, 13

John Kelley Company et al. v. Commissioner, 326 U. S. 521 ..... 6, 13

Statutes.

Internal Revenue Code:

Section 24(b)(1)(A) Paragraph (2)(D) 2, 3

Section 24(b)(F) 10

Section 1141 (53 Stat. 154; U. S. C. Title 26, Section 1141) 2

Judicial Code as amended by the Act of February 13, 1925 (43 Stat. 938; U. S. C. Title 28, Section 347a):

Section 240(a) 2

In the Supreme Court of the United States

OCTOBER TERM, 1946.

JOHN P. McWILLIAMS,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
No.....

ESTATE OF SUSAN P. McWILLIAMS,
Deceased,
JOHN P. McWILLIAMS, Executor,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
No.....

BROOKS B. McWILLIAMS,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
No.....

PETITION FOR WRITS OF CERTIORARI
To the United States Circuit Court of Appeals for the Sixth Circuit.

To the Honorable, The Chief Justice and The Associate Justices of the Supreme Court of the United States:

Petitioners pray that writs of certiorari issue to review the judgment of the Circuit Court of Appeals for the Sixth Circuit entered in these causes on December 2, 1946. Said Judgment reversed the judgment of the Tax Court of the United States in favor of petitioners and against respondent, relating to petitioners' federal income tax liability for the years 1940 and 1941.

JURISDICTION OF THE COURT.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925 (43 Stat. 938; U. S. C. Title 28, Section 347a) and Section 1141 of the Internal Revenue Code (53 Stat. 154; U. S. C., Title 26, Section 1141).

STATUTE INVOLVED.

The Statute involved is Section 24(b)(1)(A) of the Internal Revenue Code, the relevant parts of which read as follows:

"Sec. 24. ITEMS NOT DEDUCTIBLE:

* * * * *

(b). *Losses from sales or exchange of property.*—

(1) *Losses Disallowed*:—In computing net income no deduction shall in any case be allowed in respect of losses from sales or exchanges of property directly or indirectly—

(A) Between members of a family as defined in paragraph (2)(D);

* * * * *

(2) * * *

(D) The family of an individual shall include only his brothers and sisters (whether by the whole or half blood) spouse, ancestors and lineal descendants; * * *"

QUESTIONS PRESENTED.

1. Whether under the rule in the *Dobson* case (320 U. S. 489) a decision of the Tax Court based upon substantial evidence that certain transaction did not constitute indirect sales between members of a family is reviewable by the Circuit Court of Appeals.

2. If such a question is reviewable by the Circuit Court of Appeals—whether sales of listed securities by petitioner to persons unknown, executed in the regular manner on the New York Stock Exchange, followed by a

purchase of similar securities represented by different stock certificates from persons, unknown, not those to whom petitioner sold, by a member of petitioner's family, executed in the regular manner on the New York Stock Exchange, constitute "sales or exchanges of property directly or indirectly between members of a family" within the meaning of Section 24(1)(b)(A) of the Internal Revenue Code.

STATEMENT OF THE MATTER INVOLVED.

The instant case was submitted on stipulations of fact (R. 20-22; 43-44; 54-56), Exhibits (R. 23-42; 45-53; 57-77) and oral testimony (R. 78-89). The material facts as found by the Tax Court are substantially as follows:

Petitioners John P. McWilliams and Brooks B. McWilliams, are husband and wife, and are residents of Cleveland, Ohio. Petitioner Susan P. McWilliams, deceased, was the mother of John P. McWilliams. She died in November, 1941, and John P. McWilliams was appointed executor of her estate. The income tax returns for the years involved were filed with the Collector of Internal Revenue for the Eighteenth District of Ohio. (R. 12.)

Petitioner John P. McWilliams in 1940 and 1941 bought and sold a considerable amount of securities for his own and his wife's account, and also for his mother's account until her death. Said petitioner's wife and mother both had large estates of their own which said petitioner managed for a number of years. (R. 12.)

The sales of securities which gave rise to the losses here in controversy were conducted as follows: In each instance said petitioner gave his broker an order by phone to sell for his or his wife's, or his mother's account a certain number of shares of a particular stock at market and, at the same time, instructed the broker thereafter to purchase at as nearly the same price as possible a like number of shares of the same stock for the account of one of the others. No restrictions were placed on the

orders—petitioners' securities were to be sold regardless of whether another petitioner could thereafter purchase similar securities at similar prices. In each instance the broker was told that the sale was for the purpose of establishing a tax loss. (R. 12.)

During the taxable years the following shares of stock were sold by said petitioner for his individual account, his wife's account, and his mother's account (R. 12-13; 45):

Docket No. 5945—John P. McWilliams

Year 1941

700 shares of International Nickel of Canada, Ltd.
200 shares of Eastman Kodak Co.
700 shares of General Electric Co.
100 shares of Monsanto Chemical Company
100 shares of Carro de Pasco
100 shares of Westinghouse Electric Co.

Docket No. 5947—Brooks B. McWilliams

Year 1940

300 shares of General Electric
100 shares of Standard Oil Co. of N. J.
200 shares of International Nickel Co. of Canada, Ltd

Year 1941

1000 shares of Basic Refractories, Inc.
300 shares of Libby-Owens-Ford Glass Co.
100 shares of E. I. DuPont deNemours Co.
200 shares of General Motors Corporation
100 shares of American Tel. & Tel. Co.
200 shares of Liggett & Myers Tobacco Co.

Docket 5946—Estate of Susan P. McWilliams
John P. McWilliams, Executor

Year 1940

100 shares of Eastman Kodak Co.

After the above securities had been sold by one of petitioners, another petitioner purchased similar securities with his or her own separately maintained funds.

All of the above securities were sold pursuant to orders given to Curtiss-House & Company, stockbrokers in Cleveland, Ohio, and were executed on the New York Stock Exchange in the regular manner by Clark, Dodge & Company, members of the New York Stock Exchange and correspondents of Curtiss-House & Company. The securities had all been acquired and held by the petitioners more than 18 months prior to their sale. The purchasers of the securities were unknown to the petitioners, and when one petitioner purchased securities similar to those sold by another petitioner, he or she purchased different securities, bearing different serial numbers, from sellers unknown to such petitioner, who were other than those who bought the selling petitioner's securities. (R. 13-14.)

Petitioner John P. McWilliams' wife and mother in 1940 and 1941 owned property greatly in excess of the amounts involved in the transactions under consideration. During all of their lives, their securities have stood in their own names and have been kept separate from those of said petitioner. Each has maintained a separate bank account and has filed separate income tax returns. (R. 13-14.)

On the above mentioned sales petitioner John P. McWilliams claimed long term capital losses of $21,276.53 in 1941, his wife $5,592.49 in 1940 and $13,946.95 in 1941, and his mother $1,755.79 in 1940. The deductions were disallowed by the Commissioner as coming within the provisions of Section 24(b) of the Internal Revenue Code, and deficiencies in income taxes were determined for the years and in the amounts as follows: (a) John P. McWilliams—$7,110.33 for the year 1941; (b) Estate of Susan P. McWilliams, $296.75 for the year 1940; (c) Brooks B. McWilliams, $1,845.52 and $4,184.07 for the years 1940 and 1941, respectively. (R. 11.)

The Tax Court held for petitioners and entered judgment of no deficiency, finding that there were no indirect sales between petitioners.

Upon appeal by the Commissioner, the Circuit Court of Appeals for the Sixth Circuit reversed the Tax Court (one judge dissenting). It is to obtain a review of such judgment that a writ of certiorari is hereby sought.

REASON RELIED UPON FOR THE ALLOWANCE OF THIS WRIT.

The decision of the Court below is in conflict with the decisions of this Court in *Dobson v. Commissioner*, 320 U. S. 489; *Commissioner v. Scottish American Company*, 323 U. S. 119; *Boehm v. Commissioner*, 326 U. S. 287; *Commissioner v. Flowers*, 326 U. S. 465; *John Kelley Company et al. v. Commissioner*, 326 U. S. 521; and with the decision of the Circuit Court of Appeals for the Second Circuit in *Commissioner v. Ickelheimer*, 132 Fed. 2d 660.

PRAYER.

WHEREFORE, petitioners respectfully pray that writs of certiorari issue to the Circuit Court of Appeals for the Sixth Circuit requiring that Court to certify and send to this Court for review and determination, a full and complete transcript of the record and all proceedings in the causes numbered and entitled on its docket "No. 10240—Commissioner of Internal Revenue, Petitioner, vs. John P. McWilliams, Respondent; No. 10241—Commissioner of Internal Revenue, Petitioner, vs. Estate of Susan P. McWilliams, Deceased, John P. McWilliams, Executor, Respondent; No. 10242—Commissioner of Internal Revenue, Petitioner vs. Brooks B. McWilliams, Respondent" and that the judgment of said Circuit Court of Appeals be reversed by this Court.

Petitioners' brief in support of their petition is annexed hereto.

JOHN A. HADDEN,
QUENTIN ALEXANDER,
Counsel for Petitioners.

In the Supreme Court of the United States

OCTOBER TERM, 1946.

JOHN P. McWILLIAMS,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
No.....

ESTATE OF SUSAN P. McWILLIAMS,
Deceased,
JOHN P. McWILLIAMS, Executor,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
No.....

BROOKS B. McWILLIAMS,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
No.....

BRIEF OF PETITIONERS IN SUPPORT OF PETITION FOR WRITS OF CERTIORARI.

OPINIONS BELOW.

The opinion of the Tax Court of the United States is reported at 5 T. C. 73. It is printed at pages 11 to 16 of the record. The opinion of the Circuit Court of Appeals is reported at C.C.H. 46-2 U.S.T.C. Par. 9404, and it is printed at pages 101 to 106 of the record.

JURISDICTION.

The statutes under which the jurisdiction of this Court is invoked are referred to in the petition for a writ of certiorari at page 1.

STATEMENT OF THE CASE.

A statement of the case is set out in the petition for a writ of certiorari, pages 3 to 6, and will not be here repeated.

ASSIGNMENT OF ERRORS.

The Circuit Court of Appeals erred in the following particulars:

1. In reversing a factual finding of the Tax Court supported by substantial evidence, contrary to the decision of this Court in *Dobson v. Commissioner*, 320 U. S. 489, and succeeding cases decided by this Court, thereby resulting in a conflict with *Commissioner v. Ickelheimer*, 132 Fed. 2d 660.
2. In failing to allow petitioner deductions for long term capital losses which he sustained and which deductions were allowed by the Tax Court.

ARGUMENT.

The Circuit Court erred in reversing a finding of the Tax Court supported by substantial evidence, contrary to the rule first laid down by this Court in the Dobson case, and resulting in a conflict with the Ickelheimer case.

In the instant case the Tax Court weighed all the facts and made a finding that the transactions under consideration were not indirect sales between members of a family. This finding of fact, supported as it is by substantial evidence, cannot be reviewed by the Circuit Court of Appeals. Under the rule laid down by this Court in the *Dobson* case, the decision of the Tax Court need only "have warrant in the record and a reasonable basis in the law" to be nonreviewable; "the jurisdictional function is exhausted when there is found to be a rational basis for the conclusions approved by" the Tax Court. *Dobson v. Commissioner, supra.*

In the instant case the Tax Court found that the facts did not support the Commissioner's treatment of the trans-

actions under consideration as indirect sales between members of a family. In reaching its decision—that the transactions were not indirect sales—the Tax Court had many matters to consider. Petitioner's wife had ample funds of her own to make the purchases (R. 13-14), her property and securities were kept segregated from those of her husband (R. 14), petitioner sold his securities through the New York Stock Exchange to unknown purchasers and petitioner's wife bought through the New York Stock Exchange securities represented by different certificates from different sellers unknown to her (R. 13)—these were the facts upon which the Tax Court based its opinion. Had petitioner loaned his wife money to purchase securities similar to those which he sold, or had he sold his securities to a third person acting as a dummy, who in turn passed them on to petitioner's wife, the Tax Court would undoubtedly have found the transactions to be indirect sales between members of a family. But under the facts as they actually were in the instant case, the Tax Court found that there were no indirect sales. The Circuit Court, however, decided that the transactions did constitute indirect sales. Does the Circuit Court of Appeals have the power in each case to weigh the facts and determine for itself whether an indirect sale has been made, or under the rule of the *Dobson* case, *supra*, is not that function vested exclusively in the Tax Court?

Even under the doctrine formulated by the Circuit Court in its decision in the instant case, that Court would hold that some transactions, similar to the one here involved, were not indirect sales. Suppose that petitioner's wife had not purchased securities similar to those sold by petitioner (1) until a year had elapsed; (2) until six months had elapsed; (3) until one month had elapsed; (4) until one week had elapsed. In the first supposition, with a year's interval, it seems clear that the Circuit Court would not find an indirect sale. The same is true of six months and three months; but how about one month or one week? Can

it be said that as a matter of law an indirect sale has occurred when the interval is one week, but if there is a longer interval there is no indirect sale? The Circuit Court adopted this line of reasoning when it held that the Tax Court's finding was purely a matter of law, and then proceeded to determine, contrary to the Tax Court's finding, that the transactions constituted indirect sales. The Circuit Court thus exceeded its jurisdiction and substituted its finding of fact for that of the Tax Court, contrary to the rule laid down by this Court in *Dobson v. Commissioner, supra.*

As a result of this disregard of the *Dobson* rule, the decision of the Circuit Court in the instant case is in direct conflict with the decision of the Second Circuit Court of Appeals in *Commissioner v. Ickelheimer, supra.* That case involved the application of Section 24(b) (F) with respect to sales claimed to be indirectly between the fiduciary of a trust and the beneficiary of such trust. The taxpayer beneficiary sold certain bonds on the market over a ten day period and the trustee purchased with trust funds an equivalent number of the same bonds for the trust. The orders to sell were given to brokers and were executed in the regular manner on the New York Stock Exchange. The bonds purchased by the trustee were purchased through brokers in the regular manner on the New York Stock Exchange. Of the total of 100 bonds purchased by the trust, four bonds had the same serial numbers as those sold by the taxpayer and the remaining 96 bonds had different serial numbers. The Board of Tax Appeals held on the facts that there was no indirect sale between the taxpayer and the trust. This decision was affirmed by the Circuit Court of Appeals. In *Commissioner v. Kohn*, 1946 C. C. H. Par. 9393, a taxpayer sold through the New York Stock Exchange certain securities to persons unknown, and shortly thereafter his wife bought similar securities through the New York Stock Exchange from persons unknown. The Tax Court found that no indirect sales between members

of a family had taken place. On appeal, the Fourth Circuit Court of Appeals, disregarding the *Dobson* rule, decided that an indirect sale had taken place and reversed the Tax Court. The facts in each of these two cases and the instant case all differed somewhat.

As a result of these conflicting decisions, a taxpayer must plan his security transactions according to the part of the United States in which he resides. If he is a resident of the territory over which the Second Circuit Court of Appeals has jurisdiction, he may sell his securities in transactions similar to those in the instant case with the assurance that his resulting losses will be deductible. If he lives in the territories covered by the Fourth and Sixth Circuits, he will have similar transactions treated as nullities. And if he lives elsewhere in the country, the Tax Court will recognize the validity of his transactions, but he has no assurance as to what view of the matter his particular Circuit Court will take. This present state of confusion is manifestly unfair both to the taxpayer and the government. It is, however, capable of a simple solution. The solution does not lie in the formulation of a rule of law to be applied to varying sets of facts arising under this section of the Code; but rather in a recognition of the many variations of facts which so arise. The facts in every case vary, to a greater or lesser degree, from those in every other case. It is the function of the Tax Court to weigh those facts and from them determine its decision. It is the sole judge of the facts, and a Circuit Court of Appeals has no jurisdiction to substitute its interpretation of the facts for that of the Tax Court. *Dobson v. Commissioner, supra.* The conflicts arising from the decisions in the *Kohn, Ickelheimer*, and instant cases is the result of the disregard by the Courts of Appeals for the Fourth and Sixth Circuits of the proper function of the Tax Court. It is a conflict which should be remedied by this Court through application of the *Dobson* rule, with recognition of the Tax Court as the sole tribunal vested with authority to make findings of fact.

The Second Circuit Court in effect applied the *Dobson* rule when it decided the *Ickelheimer* case, although the latter case was decided earlier. Had the two other Circuit Courts done this in the *Kohn* case and the instant case, there would now be no conflict.

It should be emphasized, however, that even if the Circuit Court in the instant case had had jurisdiction to review the decision of the Tax Court, its decision was incorrect on the merits. The transactions here under consideration clearly did not come within the letter of the statute—nothing passed "between" petitioner and his wife—he sold property to X and his wife purchased other property from Y. Neither did the transactions come within the intent of the statute. This is well illustrated by the language of the Second Circuit Court of Appeals in *Commissioner v. Ickelheimer, supra.*

There the Court said:

> "The Commissioner concedes that this was no direct sale between the taxpayer and the trust of which she was a beneficiary, but argues that since the husband acted for his wife in making the sales and for the trust in making the purchases, the sales must be considered as 'indirectly' made 'between' her and the trust. We think not. The sales completely divested the taxpayer of any interest in the bonds and passed title thereto to unknown purchasers."
>
> * * * * *
>
> "Nor do we think that they were such as the purpose of the statute sought to embrace. * * * Congress did not express, and we see no reason to suppose that it entertained, any intention to disallow losses realized by bona fide sales on a public exchange. * * * Had Congress intended to strike down losses realized by a bona fide sale executed on a public exchange in case a member of the seller's family should purchase similar securities shortly thereafter, we think language more apt for the purpose would have been employed."

The Circuit Court erred in reversing the decision of the Tax Court in the instant case. In so doing it disregarded the decisions of this Court in *Dobson v. Commissioner, supra, Commissioner v. Scottish American Co., supra, Boehm v. Commissioner, supra, John Kelley Co. et al., v. Commissioner, supra, Commissioner v. Flowers, supra,* and the decision of the Circuit Court of Appeals for the Second Circuit in *Commissioner v. Ickelheimer, supra.*

CONCLUSION.

Because the decision of the Circuit Court in the instant case is in conflict with the decisions of this Court, and because it is in conflict with a decision of the Circuit Court of Appeals for the Second Circuit, petitioner requests that his petition for a writ of certiorari be granted.

Respectfully submitted,

JOHN A. HADDEN,
QUENTIN ALEXANDER,
Counsel for Petitioners.

FILE COPY

In the Supreme Court of the United States

OCTOBER TERM, 1946.

JOHN P. McWILLIAMS,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
No. 945.

ESTATE OF SUSAN P. McWILLIAMS,
deceased,
JOHN P. McWILLIAMS, Executor,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
No. 946.

BROOKS B. McWILLIAMS,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
No. 947.

BRIEF OF PETITIONERS.

JOHN A. HADDEN,
QUENTIN ALEXANDER,
1882 Union Commerce Building,
Cleveland 14, Ohio,
Attorneys for Petitioners.

John S. Beard, Jr.
of Counsel

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—MAIN 8647

INDEX.

Opinions Below 1

Jurisdiction of the Court 1

Statute Involved 2

Statement of the Matter Involved 2

Assignment of Errors 4

Argument 4

I. The Circuit Court erred in reversing a factual finding of the Tax Court supported by substantial evidence, contrary to the rule first laid down by this Court in the *Dobson* case, 320 U. S. 489 ... 4

II. The sales by the petitioners were not direct or indirect sales between members of a family within the meaning of Section 24(b)(1)(A) of the Internal Revenue Code 9

(a) The sales did not come within the letter of the statute 9

(b) The sales did not come within the intent of the statute 12

TABLE OF AUTHORITIES.

Cases.

Boehm v. Commissioner, 326 U. S. 287 ..... 6, 7

Commissioner v. Flowers, 326 U. S. 465 6

Commissioner v. Scottish American Co., 323 U. S. 119 6

Dobson v. Commissioner, 320 U. S. 489 ..... 4, 5, 6, 7, 9

Ickelheimer, Pauline, 45 B. T. A. 478 (1941), affirmed, *Commissioner vs. Ickelheimer*, 132 Fed. 2d 660 (1943), C. C. A. 2 ..... 10, 13, 17

John Kelley Co., et al. v. Commissioner, 326 U. S. 521 6, 7

Texts.

Mertens Law of Federal Income Taxation, Vol. 1, Sec. 3.22 14

49 *Yale Law Journal* 82 (note 46) 13

Statutes.

Internal Revenue Code:

Section 24(b) 15, 16, 17

Section 24(b)(1)(A) 2, 3, 4, 9, 10, 12, 13, 17

Section 24(b)(F) 10

Section 118 ..... 15, 16, 17

Section 1141 (53 Stat. 154, 26 U. S. C. 1141) 1

Judicial Code, Section 240(a), as amended by the Act of February 13, 1925 (43 Stat. 938; U. S. C., Title 28, Section 347a) 1

In the Supreme Court of the United States

OCTOBER TERM, 1946.

JOHN P. McWILLIAMS,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
No. 945.

ESTATE OF SUSAN P. McWILLIAMS,
deceased,
JOHN P. McWILLIAMS, Executor,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
No. 946.

BROOKS B. McWILLIAMS,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
No. 947.

BRIEF OF PETITIONERS.

OPINIONS BELOW.

The opinion of the Tax Court of the United States is reported at 5 T. C. 73. It is printed at pages 11 to 16 of the record. The opinion of the Circuit Court of Appeals is reported at 158 Fed. 2d 637, and it is printed at pages 101 to 106 of the record.

JURISDICTION OF THE COURT.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925 (43 Stat. 938; U. S. C., Title 28, Section 347a) and Section 1141 of the Internal Revenue Code (53 Stat. 154; U. S. C., Title 26, Section 1141).

STATUTE INVOLVED.

The statute involved is Section 24(b)(1)(A) of the Internal Revenue Code, the relevant parts of which read as follows:

"Sec. 24. ITEMS NOT DEDUCTIBLE:

* * * * *

(b) *Losses from sales or exchange of property*—

(1) *Losses Disallowed*:—In computing net income no deduction shall in any case be allowed in respect of losses from sales or exchanges of property directly or indirectly—

(A) Between members of a family as defined in paragraph (2) (D);

* * * * *

(2) * * *

(D) The family of an individual shall include only his brothers and sisters (whether by the whole or half blood) spouse, ancestors and lineal descendants; * * *"

STATEMENT OF THE MATTER INVOLVED.

John P. McWilliams, petitioner in Case No. 945, is the husband of Brooks B. McWilliams, petitioner in Case No. 947. Susan P. McWilliams, whose estate is petitioner in Case No. 946, was the mother of John P. McWilliams. In several transactions during the years 1940 and 1941, one petitioner sold, on the New York Stock Exchange, a certain number of shares of a stock listed on the New York Stock Exchange. The buyer of the stock was unknown to petitioner. Thereafter, another petitioner purchased, on the New York Stock Exchange, a like number of shares of the same stock, from persons unknown. (R. 13-14.) These transactions were conducted as follows: Petitioner John P. McWilliams gave his broker an order to sell for his or

his wife's or his mother's account, a certain number of shares of a particular stock at the market, and to thereafter purchase at as nearly the same price as possible a like number of shares for the account of one of the others. No restrictions were placed on the orders—the securities were to be sold regardless of whether another petitioner could thereafter purchase similar securities at similar prices. One petitioner did not sell in order to enable another to buy. The broker was told that the sale was for the purpose of establishing a tax loss. (R. 80, 85, 12-14.)

Petitioner John P. McWilliams had for many years managed the separate property of his wife and mother, whose securities have always stood in their own names and been kept separate from his. Each petitioner has maintained a separate bank account and has filed separate income tax returns. During the years involved, each petitioner owned property greatly in excess of the amounts involved in these transactions. (R. 12-14.)

The foregoing sales resulted in losses to the selling petitioners which they claimed as deductions for income tax purposes. The respondent disallowed the losses and determined income tax deficiencies, claiming that the sales were indirect sales between members of a family within the provisions of Section 24(b)(1)(A) of the Internal Revenue Code. The Tax Court found that the sales were bona fide and that the resulting losses were deductible, and entered judgment of no deficiencies. Upon appeal by respondent, the Circuit Court of Appeals for the Sixth Circuit reversed the Tax Court (one judge dissenting). Petitioners on January 24, 1947 filed in this Court a Petition for Writs of Certiorari to review the decision of the Circuit Court of Appeals. Said Petition was granted by this Court on March 3, 1947.

ASSIGNMENT OF ERRORS.

The Circuit Court of Appeals erred in the following particulars:

1. In reversing a factual finding of the Tax Court supported by substantial evidence, contrary to the decision of this Court in *Dobson v. Commissioner*, 320 U. S. 489, and succeeding cases decided by this Court.
2. In determining that the sales by petitioners were indirect sales between members of a family within the meaning of Section 24(b)(1)(A) of the Internal Revenue Code, and in failing to allow petitioners deductions for long term capital losses which they sustained and which deductions were allowed by the Tax Court.

ARGUMENT.

I.

The Circuit Court erred in reversing a factual finding of the Tax Court supported by substantial evidence, contrary to the rule first laid down by this Court in the Dobson case, 320 U. S. 489.

The Tax Court in the instant cases found that the sales by petitioners were not indirect sales between members of a family. This finding of fact is not subject to review by the Circuit Court of Appeals under the rule laid down by this Court in the *Dobson* case, because it has "warrant in the record and a reasonable basis in the law" and because "the judicial function is exhausted when there is found to be a rational basis for the conclusions approved by" the Tax Court. *Dobson v. Commissioner*, 320 U. S. 489.

There was, in the instant cases, much more than merely "warrant in the record and a reasonable basis in the law" for the findings of the Tax Court. Nothing passed *between*

---

* Emphasis throughout ours except where otherwise noted.

any of the petitioners—those who sold, sold to persons unknown to them and those who bought, bought different share certificates from persons unknown to them (R. 13); each buying petitioner used his own separately maintained funds (R. 13-14); no restrictions were placed on the sales—they were to be carried out regardless of whether another petitioner could purchase similar securities at similar prices. (R. 80-85.) Any Tax Court finding so well supported by evidence cannot be reviewed by the Circuit Court of Appeals. Yet in the instant cases the Circuit Court of Appeals, in complete disregard of the *Dobson* rule, treated the findings of the Tax Court as naked questions of law and decided that under the particular facts, indirect sales took place—thereby substituting its own views of a factual matter for those of the Tax Court. In so doing it exceeded its jurisdictional powers. For it is apparent that the determination of whether a transaction is an indirect sale is entirely a factual matter, to be decided by the Tax Court. Every such transaction presents a different set of facts and even those transactions which apparently are very similar are factually different in many respects. Innumerable combinations of facts may arise which the respondent might claim to be indirect sales. Here are only a few:

Suppose that by prearrangement, a husband sold listed securities to persons unknown through the New York Stock Exchange and thereafter his wife, with her own funds, bought similar securities, her husband acting as her agent in the transaction. Suppose the interval between this sale and purchase was (a) one hour; or (b) one day; or (c) two days; or (d) fifteen days; or (e) twenty nine days; or (f) thirty one days; or (g) six months. Or suppose (h) that the wife bought immediately *before* the husband sold, or (i) one day before; or (j) ten days before; or (k) twenty nine days before; or (l) thirty one days before. Or suppose that in each of the above instances the wife acted for herself rather than through her husband as agent; or sup-

pose that in each instance the husband and wife used separate brokers.

Or suppose that each of the foregoing transactions took place by coincidence, the wife, whether she handled her own affairs, or had them managed by a third person, being completely unaware of what her husband did. Or suppose that in some of these transactions the husband advanced money so that his wife could purchase, and in others she used her own funds.

Can it be accurately said that the determination of whether each of the foregoing transactions is an indirect sale is a pure question of law? Can a rule of law be formulated which will fairly cover each of these transactions? Or is it not obvious that each transaction presents a separate set of facts, and that the Tax Court must determine from those particular facts whether an indirect sale has taken place—with the decision of the Tax Court in each case a finding of fact which cannot be reviewed by the Circuit Court of Appeals? *Dobson v. Commissioner, supra*; *Commissioner v. Scottish American Co.*, 323 U. S. 119; *Boehm v. Commissioner*, 326 U. S. 287; *Commissioner v. Flowers*, 326 U. S. 465; *John Kelley Co., et al. v. Commissioner*, 326 U. S. 521.

The factual nature of the matter is clearly illustrated by the virtual certainty that if in the instant cases the lapse of time between sale and purchase had been six months, no court would say that an indirect sale had taken place. Can it be said as a matter of law that no indirect sale has taken place if there is a lapse of six months between sale and purchase, but that if the interval is shorter, then there has been an indirect sale? Or is it not apparent that all the facts including the time element must be weighed by the Tax Court to determine the ultimate fact of whether there has been an indirect sale?

Any attempt to formulate an all embracing rule of law to cover every situation where an indirect sale might be

claimed to have taken place will result only in confusion. A decision attempting to do so would be applicable only to the particular facts before the court—the remainder of the decision would of necessity be dictum. This would result in a state of confusion both for taxpayers and the Treasury Department. The correct and most practical solution is to leave the determination of whether an indirect sale has taken place to the body best qualified to weigh the particular facts—the Tax Court. The Tax Court should have the sole responsibility of determining these factual questions until such time as Congress sees fit to change the law and set up detailed, prescribed requirements for the determination of what is an indirect sale. This Court, speaking of the function of the Tax Court in *Dobson v. Commissioner, supra,* said at page 501:

> "Congress has invested the Tax Court with primary authority for redetermining deficiencies, which constitutes the greater part of tax litigation. This requires it to consider both law and facts. Whatever latitude exists in resolving questions such as those of paper accounting, treating a series of transactions as one for tax purposes, *or treating apparently separate ones as single in their tax consequences, exists in the Tax Court and not in the regular courts.*"

Respondent contends that the instant cases involve "pure questions of law or statutory constructions" and that thus the rule of the *Dobson* case is not applicable to them. These contentions have already been answered by this Court. The finding of the Tax Court in the instant cases that the facts did not constitute an indirect sale is no more a "pure question of law" than was the finding of the Tax Court that stock did not become worthless in a particular year. *Boehm v. Commissioner, supra.* In that case this Court stated at page 293:

> "But the question of whether particular corporate stock did or did not become worthless during a given taxable year is purely a question of fact to be deter-

mined in the first instance by the Tax Court, the basic fact-finding and inference making body. The circumstance that the facts in a particular case may be stipulated or undisputed does not make this issue any less factual in nature. The Tax Court is entitled to draw whatever inferences and conclusions it deems reasonable from such facts and an appellate court is limited, under familiar doctrines, to a consideration of whether the decision of the Tax Court is 'in accordance with law.' 26 U. S. C. Sec. 1141 (c)(1). If it is in accordance, *it is immaterial that different inferences and conclusions might fairly be drawn from the undisputed facts.*"

And this Court has held that the question of statutory application is a factual question to be determined by the Tax Court in the light of the particular circumstances. *John Kelley Co. et al. v. Commissioner, supra.* In that case this Court discussed the phrase "the proper interpretation and application of the statute or any regulation having the force of law," which was cited as an example of a question of law in the Committee Report accompanying the 1926 Act which permits review of Tax Court decisions "not in accordance with law." At page 529:

"The illustrations in the report, note 7, *supra*, are legal questions without doubt, except the possibility that the words 'application of the statute or any regulation having the effect of law' may be thought to give a reviewing court power to pass upon the Tax Court's conclusion from the primary or evidentiary facts. So that in the present cases, it might be said to be a question of law as to whether the primary facts adduced made the payments under consideration dividends or interest. But we think such conclusion gives inadequate weight to the purpose of the Tax Court. The finality of the Tax Court's rulings was being enlarged by the 1926 Act. The then Board was spoken of as an impartial and independent tribunal of experts 'for the determination of tax liabilities as between the Government and the taxpayer.' H. Rep. No. 1, 69th Cong., 1st Sess., p. 17. There would hardly need to be experts in tax affairs to decide questions of dates or amounts

or values or to calculate rates. *Their usefulness lies primarily in their ability to examine relevant facts of business to determine whether or not they come under statutory language.*"

The decision of the Tax Court in the instant cases is not subject to review, since the conclusions of the Tax Court are findings of fact, they are based on substantial evidence, and they present no "clear cut mistake of law." *Dobson v. Commissioner, supra.*

The decision of the Circuit Court of Appeals should be reversed and the judgment of the Tax Court should be sustained.

II.

The sales by the petitioners were not direct or indirect sales between members of a family within the meaning of Section 24(b)(1)(A) of the Internal Revenue Code.

(a) The sales did not come within the letter of the statute.

The statute in question, Section 24(b)(1)(A) of the Internal Revenue Code, reads in part as follows:

"SEC. 24. ITEMS NOT DEDUCTIBLE:

* * * * * *

(b) *Losses from sales or exchange of property*—

(1) *Losses Disallowed.*—In computing net income no deduction shall in any case be allowed in respect of losses from sales or exchanges of property, directly or indirectly—

(A) Between members of a family as defined in paragraph (2)(D);

* * * * *

(2) * * *

(D) The family of an individual shall include only his brothers and sisters (whether by the whole or half blood) spouse, ancestors and lineal descendants; * * *"

The statute prohibits the deduction of losses only on those sales which are *between* members of a family. From the facts as found by the Tax Court, it is clear that there was no sale, directly or indirectly, *between* any of the petitioners. The sales in the instant cases were executed on the New York Stock Exchange, through which one petitioner sold his securities to persons unknown, and through which another petitioner purchased from persons unknown similar securities, but securities having a different identity. The sales were bona fide, a matter of public record, selling petitioner completely divested himself of his securities. Quite possibly the selling petitioner sold to a resident of California, and the buying petitioner bought from a resident of Massachusetts. By no stretch of the imagination can it be said that one petitioner sold his securities to another petitioner—nothing passed *between* them and hence there was no indirect sale within the provisions of the statute. If, on the other hand, one petitioner had sold his stock to a third person acting as a "dummy," and that person later sold the identical stock to petitioner's wife, familiar principles of agency would constitute these transactions an indirect sale within the statutory provisions. But under the facts in the instant cases, nothing passed *between* any of the petitioners and therefore there was no indirect sale between members of a family within the provisions of Section 24(b)(1)(A).

The courts recognized that the statute covers only sales *between* members of a family in the case of *Pauline Ickelheimer*, 45 B. T. A. 478 (1941), affirmed, *Commissioner vs. Ickelheimer*, 132 Fed. 2d 660 (1943), C. C. A. 2. That case, in which the statute was first considered by the courts, involved a determination of the application of 24(b)(F), with respect to a sale indirectly between the fiduciary of a trust and the beneficiary of such trust. The petitioner sold bonds on the market over a ten day period and the trustee purchased with trust funds during this period an equivalent

amount of the same bonds for the trust. The orders to sell were given to brokers and were executed by that firm on the New York Stock Exchange in the regular manner. The bonds purchased by the trustee were purchased through a broker and the orders for purchase of the bonds were executed by that firm on the New York Stock Exchange. Of the total of 100 bonds purchased by the trustee, four bonds bore the same serial numbers as those sold by the petitioner, and the remaining 96 bonds bore different serial numbers.

The Board of Tax Appeals held that, since the sales were made on the New York Stock Exchange to persons unknown, nothing passed "between" petitioner and the trust, and that there was no indirect sale between them. The opinion states at page 481:

> "It is patent that the sale of bonds by petitioner was not a direct sale of bonds to her husband as trustee of the trust. The bonds were sold through a broker to undisclosed purchasers. Petitioner's husband as trustee purchased similar bonds from undisclosed vendors."
>
> * * * * *
>
> "We are of the opinion that the facts herein do not disclose an indirect sale from petitioner to her husband as fiduciary of the trust. It is apparent that the sales of the bonds were made to purchasers other than the trustee of the trust. The fact that petitioner's husband as trustee purchased the bonds from the open market shortly thereafter does not convert the sales by petitioner and the purchases by her husband as trustee into indirect sales *between* petitioner and her husband as trustee."

The Circuit Court of Appeals for the Second Circuit also recognized this requirement. At page 661:

> "The sales completely divested the taxpayer of any interest in the bonds and passed title thereto to unknown purchasers. There was no agreement between her and her husband or between the husband and the undisclosed purchasers from her that the trust could

buy what she sold *or that she should sell to enable the trust to buy.* Indeed, it is apparent that the trust could have purchased 96 of the 100 bonds bought for it even if she had not sold, and as to the 4 bonds which she had formerly owned it was mere accident that the trust later acquired them rather than others.

* * * * *

"It is clear that the transactions do not fall within the letter of the statute."

From the foregoing, it is clear that there can be no indirect sale within the meaning of the statute unless property passes *between* members of a family. And in the instant cases nothing passed *between* any of the petitioners.

(b) The sales did not come within the intent of the statute.

The statute in question was first enacted as a part of the Revenue Act of 1934. The 73rd Congress, which drafted the statute, was concerned with stopping various methods of tax avoidance. Among them was the practice of a husband "selling" securities to a member of his family directly, or through the medium of a third person acting as a "dummy."

In this type of transaction there is no real evidence to show that the husband has actually disposed of his securities or that he cannot get them back whenever he wishes; the identical securities are passed to another member of a family; the transactions are a matter of private record only. These transactions have been labeled "boudoir sales."

And that is the type of transaction which Congress was aiming at in passing Section 24(b)(1)(A). They had no intention of outlawing bona fide sales at market price to persons unknown through a public exchange, when after such sales a family member bought at market price securities represented by different certificates from persons unknown. When one member of a family has disposed

of his securities to persons unknown in a bona fide sale which is publicly recorded, it matters not that another member of the family thereafter purchases similar but different securities with her own funds. Husband and wife are separate legal entities, and have always been treated as such for tax purposes.

It is apparent that Congress in enacting Section 24(b)-(1)(A) had no intention of embracing bona fide sales on public exchanges. The Second Circuit Court of Appeals held in *Commissioner vs. Ickelheimer, supra*, that Congress did not so intend. At page 661:

> "It is clear that the transactions do not fall within the letter of the statute.
>
> Nor do we think they were such as the purpose of the statute sought to embrace. The purpose was to disallow losses incurred in transactions which were not 'definitely at arms length.' See 81 Cong. Rec. 9019. Sales between members of a family were often not real transactions but it was not easy for the Commissioner to prove them sham. Indirect sales through a friend or dummy were also not uncommon. The restriction on losses first introduced in section 24 of the 1934 Act was intended to meet these evidentiary difficulties. See 78 Cong. Rec. 2662. Congress did not express, and we see no reason to suppose that it entertained, any intention to disallow losses realized by bona fide sales on a public exchange. Under prior revenue acts such a sale entitled the seller to a deduction despite a contemporaneous purchase on the exchange of similar securities by a member of the seller's family. *Commissioner v. Behan*, 2 Cir. 99 F. 2d 609. His purchase does not make the prior sale one indirectly between the parties. Had Congress intended to strike down losses realized by a bona fide sale executed on a public exchange in case a member of the seller's family should purchase similar securities shortly thereafter, we think language more apt for the purpose would have been employed."

In an article dealing with this Section in 49 *Yale Law Journal* 82 (note 46) the following observation is made:

(The article first points out that Congress obviously intended that capital losses for purposes of income tax deductions should be realized only on bona fide sales and after setting forth the history of section 24(b) the comment is made that a loss-resulting sale may not be disallowed merely because the tax reduction motive was predominant.)

"Thus a sale is final if the shareholder risks his holdings in the open market. *Samuel M. Vauclain*, 16 B. T. A. 1005 (1920). In that case (prior to enactment of Sec. 118) stock was repurchased on the same day.

"Where husband sells securities on the market and wife immediately buys similar securities with her own money, it is probably neither a wash sale under sec. 118 nor an indirect sale under sec. 24(b). *Commissioner v. Behan*, 90 F. 2d 609; but if Congressional policy discourages immediate repurchase by the taxpayer, should he be permitted to achieve nearly the same benefits through immediate repurchase by one in close relation to him? *Section 118 might well be combined with 24(b) and expanded to disallow loss where, within 30 days, there has been a purchase by persons in the relations there described.*"

From the above article, it is seen that as early as 1939 suggestions have been made that if Congress really wanted to make a capital loss arising out of the sale of securities non-deductible in the event that a member of the same family purchased substantially the same securities, they should amend the law to say so. It is submitted that the fact that Congress has not taken any such action in the intervening years since 1941 when the Tax Court decided the *Ickelheimer* case, is a strong indication that they do not desire to do so.

In *Mertens Law of Federal Income Taxation*, Vol. 1, Sec. 3.22, the following statement is made:

"3.22 Administrative or Judicial Construction Followed by Statutory Re-enactment. In an earlier section we dealt with a fundamental canon of construction to the effect that Congress is presumed to use

terms in a statute in their ordinary and settled meaning. A corollary of this rule is that when Congress re-enacts a statute it is presumed to have knowledge of Treasury Department regulations, court decisions and Treasury Department practice which are factors in fixing the everyday and trade meaning of terms, and accordingly it is presumed to have used the terms in that sense. In line with this reasoning, there is a great body of cases holding that the re-enactment of a statute substantially unchanged is persuasive indication of the adoption by Congress of a prior judicial construction thereof. Likewise, where an executive construction of a statute is followed by Congressional re-enactment without change, a *rebuttable presumption* is created that Congress approved such construction of the statute. The ruling or regulation then is said, where this presumption is not rebutted, to have the force and effect of law."

(The text cites many authorities supporting the above rather fundamental statement of the law.)

If an indirect sale between members of a family as encompassed in Section 24(b) should be held to include the sale through the medium of a stock exchange in the usual manner by the taxpayer to persons unknown and the purchase of substantially the same securities by a member of the taxpayer's family through the same medium from sellers unknown, there will then arise a strange inconsistency between Section 24(b) and Section 118.

Section 118 provides clearly by implication that a taxpayer may sell securities and repurchase them after thirty days have elapsed and be entitled to a tax loss on the original sale. Section 24(b) on the other hand contains no time limitation. For instance, in the instant case in which John P. McWilliams is the petitioner, he sold certain securities on July 3rd. Let us suppose that his wife, instead of purchasing substantially the same securities on July 3rd, had waited until August 5th, more than thirty days, before purchasing the securities.

Assuming only for the purposes of argument that Congress intended to cover by the term "indirect sale" such separate transactions by husband and wife, it is clear that Congress failed in Section 24(b) to set a time limit as it did in Section 118 beyond which such transactions would not be considered "indirect sales." The fact that Congress did set such a time limit in Section 118 and failed to do so in Section 24(b), thus leaving in the latter case the door wide open for the Commissioner to claim an "indirect sale" in the example posed above, indicates that Congress did not intend to encompass within the term of "indirect sale" the transactions involved in the instant cases. It is certainly a fair assumption that had Congress intended to encompass such transactions by the term "indirect sale," following the requirements of explicit draftsmanship, it should and would have covered the time element as it did in Section 118. It is somewhat absurd to assume that Congress intended that the purchase of substantially the same securities by a wife 30 days after a sale by the husband would invalidate his tax loss when Section 118 provides that a similar purchase by the husband 30 days after such sale would not invalidate the tax loss.

Another argument that shows that Congress did not intend an "indirect sale" to cover the transactions here involved is the fact that Section 118 was originally enacted in June of 1924 and has remained in substantially the same form since the Act of 1928. In that Act and in all subsequent re-enactments of this section, the language used is—

> "In the case of any loss claimed * * * where it appears that within thirty days before or after the date of such sale, taxpayer has acquired * * * *substantially* identical property * * *."

This phrase—"substantially identical property" was well known to Congress and had received the judicial interpretation of the courts prior to the enactment of Section

24(b) in 1934; and yet Congress did not use this language in drafting Section 24(b) but dealt only with sales *between* members of the same family, etc. Having before it the language of Section 118 and the judicial interpretations and regulations, Congress must have had a reason for using new and entirely different language in dealing with transactions between members of the same family, etc.

It is apparent that in enacting Section 24(b)(1)(A) Congress had in mind primarily "boudoir sales" between husband and wife, etc., and that it did not want to go to the length of saying that another member of the same family might not purchase substantially the same securities sold by the taxpayer claiming the deduction, but that it did intend to prevent the establishment of tax losses through informal sales within a family. The two things are, of course, entirely different. The evidence with respect to "boudoir sales" is so solely within the control of the members of the family that as long as they could be used to establish tax losses there was a real invitation to fraud. Such sales can readily be antedated,—in the face of which the government is usually helpless. However, in the instant cases, the evidence and records of the brokers, the sale and purchase of securities on the stock exchange, and the detail of the sales clearly establish that the sales were made and the losses incurred by the taxpayers at the times claimed by the respondents; and under such conditions Congress did not desire that the resultant tax losses should be disallowed. Certainly the ordinary meaning of 24(b) does not include such sales. As said by the Circuit Court of Appeals in the *Ickelheimer* case, *supra*,—

> "Had Congress intended to strike down losses realized by a bona fide sale executed on a public exchange in case a member of the seller's family should purchase similar securities shortly thereafter, *we think that language more apt for the purpose would have been employed.*"

The Circuit Court of Appeals in its opinion in the instant cases placed great emphasis on the fact that after the transactions were completed, similar securities were still held within the "family group," and that thus no material change was made in each of petitioner's property rights. This reasoning has no basis unless the incomes and property of various members of a family group must be treated as a single unit for tax purposes. And it has been very definitely settled by Congress that such a requirement is not a part of our law. It has been many times proposed that Congress require husbands and wives to file joint income tax returns, thereby creating a compulsory family unit. Recently, the proposal was revived in 1941 and 1942. In August, 1941 it was overwhelmingly defeated in the House of Representatives and it was rejected in committee in the Senate, despite support by the Treasury Department. The following year the Treasury again strongly urged passage of such a measure; it was rejected in committee by both houses of Congress. Obviously Congress looks upon such a measure with disfavor but unless this "family unit" theory is followed there is no basis for the decision of the Circuit Court of Appeals. The instant cases present in substance the following situation:

One petitioner sold property to X—a person unknown to him; his wife thereafter purchased similar property from Y—a person unknown to her. Nothing passed "between" husband and wife, directly or indirectly. After the transactions were completed, the wife owned *different* property from that formerly owned by the husband. The fact that Y's property, now owned by the wife, is similar to property owned by X, formerly owned by the husband, is no support to the conclusion that the husband sold his property to the wife. That conclusion can be reached only by adopting the theory that the husband and wife constituted a "family unit"—that the income and the property of each are not separate but must be treated together for

tax purposes. That is not the law now, nor has it ever been.

The decision of the Circuit Court of Appeals should be reversed, and the decision of the Tax Court should be affirmed.

Respectfully submitted,

JOHN A. HADDEN,
QUENTIN ALEXANDER,
1882 Union Commerce Bldg.,
Cleveland 14, Ohio,
Attorneys for Petitioners.

In the Supreme Court of the United States

OCTOBER TERM, 1946.

JOHN P. McWILLIAMS,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

No. 945.

ESTATE OF SUSAN P. McWILLIAMS,
deceased,
JOHN P. McWILLIAMS, Executor,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

No. 946.

BROOKS B. McWILLIAMS,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

No. 947.

REPLY BRIEF OF PETITIONERS.

JOHN V. HARPER,
QUINTUS ALEXANDER,
1882 Union Commerce Building,
Cleveland 14, Ohio.

INDEX.

Reply Brief of Petitioners 1

Addendum 7

TABLE OF AUTHORITIES.

Cases.

Commissioner v. Court Holding Co., 324 U. S. 331 1

Commissioner v. Ickelheimer, 132 Fed. (2) 660 6

Crane v. Commissioner, decided by this Court April 14, 1947 6

Duel v. Hollins, 241 U. S. 523 7

Gorman v. Littlefield, 229 U. S. 19 7

Gregory v. Helvering, 293 U. S. 465 1

Griffiths v. Helvering, 308 U. S. 355 1

Gummey, Frank B., 26 B. T. A. 894 ..... 2, 3

Higgins v. Smith, 308 U. S. 473 1

Minnesota Tea Co v. Helvering, 302 U. S. 609 1

United States v. American Trucking Ass'ns., 310 U. S. 534 1

Statutes.

Internal Revenue Code:

Section 24(b) 4

Section 24(b)(1)(A) 2, 3, 4, 5, 7

Section 118 ..... 2, 3

In the Supreme Court of the United States

OCTOBER TERM, 1946.

JOHN P. McWILLIAMS, Petitioner, vs. COMMISSIONER OF INTERNAL REVENUE, Respondent.	No. 945.
ESTATE OF SUSAN P. McWILLIAMS, deceased, JOHN P. McWILLIAMS, Executor, Petitioner, vs. COMMISSIONER OF INTERNAL REVENUE, Respondent.	No. 946.
BROOKS B. McWILLIAMS, Petitioner, vs. COMMISSIONER OF INTERNAL REVENUE, Respondent.	No. 947.

REPLY BRIEF OF PETITIONERS.

Respondent's brief cites as authority for the proposition that sales took place *between*[1] the petitioners, the cases of *Griffiths v. Helvering*, 308 U. S. 355; *Minnesota Tea Co. v. Helvering*, 302 U. S. 609; *Gregory v. Helvering*, 293 U. S. 465; *Higgins v. Smith*, 308 U. S. 473; *Commissioner v. Court Holding Co.*, 324 U. S. 331; and *United States v. American Trucking Ass'ns.*, 310 U. S. 534. These cases have no bearing if Congress did not intend Section 24(b)(1)(A) to cover transactions similar to petitioners'. And it is apparent that Congress had no such intention in drafting that statute. This is clearly illustrated by the following:

[1] Emphasis ours throughout except as otherwise noted.

1. In seeking to determine the intended scope of Section 24(b)(1)(A) as contemplated by Congress it is pertinent to examine the circumstances under which it was enacted.[2] The case of *Frank B. Gummey*, 26 B. T. A. 894, decided in 1933, acquiescence XIII-2 C. B. 8, had been decided just prior to the convening of the 73rd Congress. In that case the Board of Tax Appeals held that the wash sale provision of Section 118 did not invalidate a deductible loss on a sale by the husband taxpayer which had been followed within 30 days by a purchase on the stock exchange of substantially identical securities by the wife. It was a case in which husband and wife had made a joint income tax return. If it had been the intention of the Treasury Department to seek a change in the law as laid down by the Board of Tax Appeals and in which it had acquiesced it would have been much more logical for the Treasury Department to propose to Congress an amendment of Section 118—the wash sales statute. It would have been a very simple matter for Congress to accomplish this result by inserting the words which we have interpolated, contained in the brackets in Section 118 as follows:

> "(a) In the case of any loss claimed to have been sustained from any sale or other disposition of shares of stock or securities where it appears that, within a period beginning 30 days before the date of such sale or disposition and ending 30 days after such date, the taxpayer [*or a related person as hereinafter defined*] has acquired * * * or has entered into a contract or option so to acquire, substantially identical stock or securities, then no deduction for the loss shall be allowed * * *."
>
> [There would follow a definition of "related person" which would include the members of the taxpayer's family etc. contained in subsection (2)(D) of Section 24(b).]

---

[2] The present Section 24(b)(1)(A) was originally enacted as a part of the Revenue Act of 1934, drafted by the 73rd Congress.

That Congress did not amend Section 118 in the above manner when the statute was ready to hand, and when the Board of Tax Appeals had held that it did not cover situations such as the instant cases, but chose rather to pass a new section, Section 24(b)(1)(A), which in its terms deals only with sales *between* taxpayer and members of his family, etc., must be accorded significance. It is persuasive evidence of two things, one that the Treasury Department did not have in mind and was not asking Congress to do away with the rule laid down in the *Gummey* case, *supra*, in which it had acquiesced. It is equally persuasive evidence that Congress did not intend to do away with the rule laid down in the *Gummey* case and acquiesced in by the Treasury Department.

It can be argued that just because Congress chose to enact a new statute—Section 24(b)(1)(A)—instead of amending Section 118 as we have suggested, is not conclusive proof that they did not intend to affect the law that had been laid down under Section 118 in the *Gummey* case in which the Commissioner had acquiesced. However, it will be noticed that there is no reference to Section 118 in Section 24(b)(1)(A), and if Congress had intended to affect the Board of Tax Appeal's interpretation of Section 118 it certainly is to be expected that they would have used language clearly indicating that intention. There was ready to hand accurate, tested language in Section 118, viz.: "Substantially identical property"; the fact that they did not use this language or synonymous language but chose rather "sales or exchanges of property directly or indirectly *between* members of a family," is again persuasive that Congress did not intend to change the law as the court had construed Section 118.

If Congress had so intended, it would also have designated a period of time beyond which losses on such transactions would be deductible. Section 118 covers purchase by the taxpayer of substantially identical property within

either 30 days before or after the sale. Similar provisions had been part of the law since the Revenue Act of 1921, where they first appeared, and they were well known to Congress. If Congress had intended to cover transactions similar to petitioners' in Section 24(b)(1)(A) (notwithstanding the failure to use therein the phrase "substantially identical property"), it is a reasonable assumption that a time limit would have been specified, and that it would not have been left to the courts to decide what period of time must elapse before the losses on such sales would be deductible.

2. There is further evidence that Congress did not wish to impinge upon the separate rights of husband and wife beyond the literal meaning of the words in Section 24(b). Throughout the years proposals for compulsory joint income tax returns for husband and wife have failed in Congress. As recently as 1941 and 1942 such a measure was overwhelmingly defeated in Congress despite strong support from the Treasury Department. Congress had always been opposed to such a measure. When Section 24(b)(1)(A) is considered in the light of this background, it is reasonable to conclude that Congress had no intention of writing a law which would in effect create a compulsory family unit embracing not only income but principal. This attitude of Congress against compulsory joint income tax returns should be persuasive to any court not to construe the words of Section 24(b)(1)(A) beyond their clear literal meaning.

3. There is no indication from Committee Reports or the Congressional Record that Congress meant to cover any sort of transaction other than that best typified by the Charles E. Mitchell case—direct sales between husband and wife, or indirect sales between husband and wife by means of a dummy third party—"boudoir sales." As stated by respondent, the validity of such sales depended on whether or not they were bona fide, and the evidence

in this respect was almost entirely within the control of the parties. Consequently it was extremely difficult for the government to establish that a sale was not bona fide. To remedy this situation, Congress passed Section 24(b)(1)(A), thus forbidding the deduction of losses on these private transactions. In order to cover the frequently followed practice of using a third person dummy, the word "indirectly" was included, and so that the section would not change the law as laid down in the *Gunfmey* case and embrace bona fide public sales, its coverage was restricted to sales *between* the parties, thereby expressly excepting publicly recorded sales to persons unknown through the medium of a stock exchange.

Respondent has cited no authority for its contention that the statute should be stretched beyond its literal meaning. There is none. The language from Committee Reports relied upon by the Circuit Court of Appeals in its opinion and by respondent in his brief does not support respondent's contention—it merely repeats the exact language of the statute:

> "Experience shows that the practice of creating losses through transactions *between* members of a family and close corporations has been frequently utilized for avoiding the income tax." H. Rep. No. 704, 73d Cong. 2d Sess. p. 1.

Respondent has cited nothing to show that Congress intended to extend the coverage of Section 24(b)(1)(A) beyond its express language—transactions *between* members of a family. The statute has effectively stopped the practices at which it was aimed—"boudoir sales." It should not be perverted to embrace transactions which Congress did not intend it to embrace.

4. The language of the statute negatives any such intention—it forbids deductions only on losses "from sales or exchanges of property directly or indirectly * * * *between* members of a family * * *." The record clearly

shows that nothing ever passed *between* any of the petitioners. In the case of *Crane v. Commissioner*, decided by this Court April 14, 1947, the Chief Justice said "* * * the words of statutes—including revenue acts—should be interpreted where possible in their ordinary, everyday senses."

The language of the Second Circuit Court of Appeals in *Commissioner v. Ickelheimer*, 132 Fed. (2) 660, 661, is most pertinent here:

> "Had Congress intended to strike down losses realized by a bona fide sale executed on a public exchange in case a member of the seller's family should purchase similar securities shortly thereafter, *we think that language more apt for the purpose would have been employed.*"

The judgment of the Circuit Court of Appeals should be reversed and the judgment of the Tax Court should be affirmed.

Respectfully submitted,

JOHN A. HADDEN,
QUENTIN ALEXANDER,
1882 Union Commerce Bldg.,
Cleveland 14, Ohio,
Counsel for Petitioners.

ADDENDUM.

On pages 18 and 19 of respondent's brief the cases of *Gorman v. Littlefield*, 229 U. S. 19, and *Duel v. Hollins*, 241 U. S. 523, are cited to show that the securities have some of the characteristics of fungible goods. In view of the clear intention of Congress not to include the transactions in the instant cases within the purview of Sec. 24(b)(1)(A) as demonstrated above, this similarity between securities and fungible goods is unimportant. Respondent's argument seems to be that if securities are like fungible goods a sale of 100 shares of Eastman Kodak by Susan McWilliams and the purchase of 100 shares by her son, John P. McWilliams, on the same day should be treated as though the same property were sold by her and purchased by her son, although the purchaser from Susan McWilliams and the seller to John P. McWilliams were different people and the certificates were different. The holder of a warehouse receipt for 1,000 bushels of wheat is entitled to receive from the elevator company 1,000 bushels of unspecified wheat, but the courts have never held, and no one has ever advanced the theory, that if the holder of such a receipt sells his receipt to X and shortly thereafter the holder's wife buys from Z a different warehouse receipt for 1,000 bushels of wheat stored in the same elevator the legal result is that the holder has sold his 1,000 bushels of wheat to his wife. There has been no sale, directly or indirectly, "between" them.

FILE COPY

Office - Supreme Court, U. S.
FILED
FEB 14 1947
CHARLES ELMORE CROPLEY
CLERK

Nos. 945, 946 and 947

In the Supreme Court of the United States

OCTOBER TERM, 1946

JOHN P. McWILLIAMS, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ESTATE OF SUSAN P. McWILLIAMS, DECEASED, JOHN P. McWILLIAMS, EXECUTOR, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

BROOKS B. McWILLIAMS, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 945

JOHN P. McWILLIAMS, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

No. 946

ESTATE OF SUSAN P. McWILLIAMS, DECEASED, JOHN P. McWILLIAMS, EXECUTOR, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

No. 947

BROOKS B. McWILLIAMS, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

1. The question in this case is whether the sale of listed securities through the New York Stock

Exchange by members of a family followed by purchases through the exchange of like securities at the same prices by other members of the family, on orders to buy placed simultaneously with the orders to sell, all of which was done for tax avoidance purposes, constituted "sales or exchanges of property, directly or indirectly, between members of a family" within the meaning of Section 24 (b) (1) (A) of the Internal Revenue Code, which provides:

> (b) *Losses from Sales or Exchanges of Property.*—
>
> (1) *Losses disallowed.*—In computing net income no deduction shall in any case be allowed in respect of losses from sales or exchanges of property, directly or indirectly—
>
> (A) Between members of a family, as defined in paragraph (2) (D);

The decisions of the court below holding that the statute applies even though purchases and sales are made through the stock exchange, are in harmony with *Commissioner* v. *Kohn,* 158 F. 2d 32 (C. C. A. 4th), and in substantial conflict with the decision of the Circuit Court of Appeals for the Second Circuit in *Commissioner* v. *Ickelheimer,* 132 F. 2d 660. Although the court below recognized possible differences between the cases, it placed its decision squarely upon Judge Learned Hand's dissenting opinion in the *Ickelheimer* case. (R. 105.) Accordingly, although we believe the

decision below to be correct, we do not oppose the granting of certiorari with respect to this issue.

2. The action of the court below in reviewing the decision of the Tax Court in the instant case is not in conflict with the decisions of this Court in *Dobson* v. *Commissioner*, 320 U. S. 489; *Commissioner* v. *Scottish American Co.*, 323 U. S. 119; *Boehm* v. *Commissioner*, 326 U. S. 287; *Commissioner* v. *Flowers*, 326 U. S. 465; *John Kelley Co.* v. *Commissioner*, 326 U. S. 521. Those cases have no application where, as here, pure questions of law or statutory constructions are involved, or where there is presented a question of law which may be decided without reference to questions of fact or inferences of fact drawn from the findings of fact. There is here presented a "clear-cut" question of law which is reviewable by the appellate courts. *Dobson* v. *Commissioner*, 320 U. S. 489, 492, 493, and *Commissioner* v. *Kohn*, *supra*. *Trust of Bingham* v. *Commissioner*, 325 U. S. 365, 371.

That the instant case raises a pure question of law is evident from the fact that the Tax Court rested its decision solely upon its prior decision in *Ickelheimer* v. *Commissioner*, 45 B. T. A. 478, affirmed, 132 F. 2d 660 (C. C. A. 2d). It decision was patently that regardless of circumstances, the statutory prohibition against deductions for losses from sales "directly or indirectly" between mem-

bers of a family, does not apply if the sale and purchase are made through stock exchanges. (R. 16.) The decision did not involve a balancing of conflicting inferences; rather, it involved a rule of law which the Tax Court thought had crystallized from the *Ickelheimer* case. It was the correctness of that rule of law that was before the court below for decision.

Accordingly, while we think that the decision below is correct, the granting of writs of certiorari is not opposed because of the existence of a substantial conflict with *Ickelheimer* v. *Commissioner, supra,* and the importance of the problem.

Respectfully submitted.

GEORGE T. WASHINGTON,
Acting Solicitor General.

FEBRUARY 1947.

U. S. GOVERNMENT PRINTING OFFICE: 1947

FILE COPY

Nos. 945, 946 and 947

In the Supreme Court of the United States

OCTOBER TERM, 1946

JOHN P. McWILLIAMS, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ESTATE OF SUSAN P. McWILLIAMS, DECEASED, JOHN P. McWILLIAMS, EXECUTOR, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

BROOKS B. McWILLIAMS, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT

INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statute involved	2
Statement	3
Summary of argument	7
Argument:	
The court below correctly held that transactions in question were sales or exchanges, "indirectly," between the members of a family within the meaning of Section 24 (b) (1) of the Internal Revenue Code	9
1. Background of the statutory provisions	10
2. The sales here involved fall within Section 24 (b) (1)	14
3. The Tax Court's interpretation of Section 24 (b) (1) was reviewable by the Court below	21
Conclusion	23

CITATIONS.

Cases:	
Allen v. *Commissioner*, 38 B. T. A. 160	15
Angelus Milling Co. v. *Commissioner*, 325 U. S. 293	22
Arguimbau v. *Commissioner*, 31 B. T. A. 604	16
Bingham, Trust of, v. *Commissioner*, 325 U. S. 365	22
Brochon v. *Commissioner*, 30 B. T. A. 404	15
Choate v. *Commissioner*, 324 U. S. 1	22
Claridge Apartments Co. v. *Commissioner*, 323 U. S. 141	22
Cole v. *Helburn*, 4 F. Supp. 230	16
Commissioner v. *Behan*, 90 F. 2d 609	16
Commissioner v. *Court Holding Co.*, 324 U. S. 331	18
Commissioner v. *Disston*, 325 U. S. 442	22
Commissioner v. *Estate of Bedford*, 325 U. S. 283	22
Commissioner v. *Estate of Field*, 324 U. S. 113	22
Commissioner v. *Hale*, 67 F. 2d 561	12
Commissioner v. *Harmon*, 323 U. S. 44	22
Commissioner v. *Ickheimer*, 132 F. 2d 660	17
Commissioner v. *Kohn*, 158 F. 2d 32	16
Commissioner v. *Smith*, 324 U. S. 177	22
Commissioner v. *Wemyss*, 324 U. S. 303	22
Commissioner v. *Wheeler*, 324 U. S. 542	22
Crane v. *Commissioner*, No. 68, this Term, decided April 14, 1947	22

Cases—Continued Page

Deputy v. *duPont*, 308 U. S. 488 20
Dobson v. *Commissioner*, 320 U. S. 489 ..... 21, 22
Douglas v. *Commissioner*, 322 U. S. 275 22
Duel v. *Hollins*, 241 U. S. 523 19
DuPont v. *Commissioner*, 118 F. 2d 544, certiorari denied, 314 U. S. 623 12
Equitable Society v. *Commissioner*, 321 U. S. 560 20
Esperson v. *Commissioner*, 49 F. 2d 259, certiorari denied, 284 U. S. 658 12
Fondren v. *Commissioner*, 324 U. S. 18 22
Gorman v. *Littlefield*, 229 U. S. 19 19
Gregory v. *Helvering*, 293 U. S. 465 18
Griffiths v. *Commissioner*, 308 U. S. 355 17
Helvering v. *Inter-Mountain Life Insurance Co.*, 294 U. S. 686 20
Helvering v. *Mitchell*, 303 U. S. 391 12
Helvering v. *Northwest Steel Mills*, 311 U. S. 46 20
Higgins v. *Smith*, 308 U. S. 473 18
Hill v. *United States*, 12 F. Supp. 798 12
Interstate Transit Lines v. *Commissioner*, 319 U. S. 590 20
McDonald v. *Commissioner*, 323 U. S. 57 ..... 20, 22
Minnesota Tea Co. v. *Helvering*, 302 U. S. 609 18
Mitchell v. *Commissioner*, 32 B. T. A. 1093, reversed, 89 F. 2d 873 12
New Colonial Co. v. *Helvering*, 292 U. S. 435 20
Peters v. *Commissioner*, 28 B. T. A. 976, appeal dismissed, 69 F. 2d 999 12
Porter v. *Commissioner*, 36 B. T. A. 475 16
Powell v. *Commissioner*, 94 F. 2d 483 16
Putnam, Estate of, v. *Commissioner*, 324 U. S. 393 22
Security Mills Co. v. *Commissioner*, 321 U. S. 281 22
Shoenberg v. *Commissioner*, 77 F. 2d 446, certiorari denied, 296 U. S. 586 16
Uihlein v. *Commissioner*, 30 B. T. A. 399, affirmed, 82 F. 2d 944 12
United States v. *Amer. Trucking Assn's*, 310 U. S. 534 20
Webre Steib Co. v. *Commissioner*, 324 U. S. 164 22
White v. *United States*, 305 U. S. 281 20
Zimmerman v. *Commissioner*, 36 B. T. A. 279, reversed, 100 F. 2d 1023 12

Statutes:

Internal Revenue Code:
Sec. 23 (26 U. S. C. 1940 ed., Sec. 23) 20
Sec. 24 (26 U. S. C. 1940 ed., Sec. 24) 2, 7, 9, 10, 4, 18, 19, 20
Revenue Act of 1934, c. 277, 48 Stat. 680:
Sec. 24 11

Miscellaneous:

	Page
78 Cong. Rec. 2510, 2661, 2662	11, 12
H. Doc. No. 260, 75th Cong., 1st Sess.	14
H. Doc. No. 337, 75th Cong., 1st Sess., pp. 14–15	14
H. Rep. No. 704, 73d Cong., 2d Sess., pp. 1, 23 (1939–1 Cum. Bull. (Part 2) 554, 571)	13
H. Rep. No. 1546, 75th Cong., 1st Sess., p. 26 (1939–1 Cum. Bull. (Part 2) 704, 722–723)	14
Preliminary Report of a Subcommittee of the Committee on Ways and Means on Prevention of Tax Avoidance, 73d Cong., 2d Sess., p. 15	13
S. Rep. No. 558, 73d Cong., 2d Sess., p. 27 (1939–1 Cum. Bull. (Part 2) 586, 607)	14
1 Williston on Sales (2d ed.), Secs. 146–159	19

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 945

JOHN P. McWILLIAMS, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

No. 946

ESTATE OF SUSAN P. McWILLIAMS, DECEASED, JOHN P. McWILLIAMS, EXECUTOR, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

No. 947

BROOKS B. McWILLIAMS, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the Tax Court of the United States (R. 11–16) is reported in 5 T. C. 623. The

opinion of the Circuit Court of Appeals (R. 101–106) is reported in 158 F. 2d 637.

JURISDICTION

The judgments of the Circuit Court of Appeals were entered on December 2, 1946. (R. 97–99.) The petition for writs of certiorari was filed on January 24, 1947 and was granted on March 3, 1947 (R. 108). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Section 24 (b) (1) of the Internal Revenue Code disallows deductions on account of losses from sales "directly or indirectly * * * Between members of a family". In this case, in accordance with a pre-arranged plan to establish tax losses, a spouse sold shares of stock on the New York Stock Exchange, and on the same day, an identical number of shares of the same stock (bearing different certificate numbers) was purchased on the exchange for the account of the other spouse. The question presented is whether, as a matter of law, the provisions of Section 24 (b) (1) are rendered inapplicable by such a device.

STATUTE INVOLVED

Internal Revenue Code:

SEC. 24. ITEMS NOT DEDUCTIBLE.

* * * * * *

(b) *Losses from Sales or Exchanges of Property.*—

(1) *Losses Disallowed.*—In computing net income no deduction shall in any case be allowed in respect of losses from sales or exchanges of property, directly or indirectly—

(A) Between members of a family, as defined in paragraph (2) (D);

* * * * *

(2) *Stock ownership, family, and partnership rule.*—For the purposes of determining, in applying paragraph (1), the ownership of stock—

* * * * *

(D) The family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;

* * *

* * * * * *

(26 U. S. C. 1940 ed., Sec. 24.)

STATEMENT

The facts as stipulated (R. 20–77) and as found by the Tax Court (R. 11–14) are substantially as follows:

John P. McWilliams and Brooks B. McWilliams are husband and wife, and are residents of Cleveland, Ohio. Susan P. McWilliams, deceased, was the mother of John P. McWilliams. She died in November, 1941, and John P. McWilliams was appointed executor of her estate. (R. 12.)

Mr. McWilliams is president of the Youngstown Steel Door Company. In 1940 and 1941 he

bought and sold a considerable amount of securities for his own and his wife's account and also for his mother's account until her death. His wife and mother both had large estates of their own which he managed for a number of years. (R. 12.)

The sales of securities which gave rise to the losses here in controversy admittedly were for the purpose of establishing tax losses. In each instance Mr. McWilliams would give his broker an order by phone to sell for his or his wife's, or his mother's account a certain number of shares of a particular stock at market and, at the same time, would instruct the broker thereafter to purchase at as nearly the same price as possible a like number of shares of the same stock for the account of one of the others. In each instance the broker was told that the sale was for the purpose of establishing a tax loss. (R. 12.)

During the taxable years the following shares of stock were sold by Mr. McWilliams for his individual account and for his wife's account (R. 12–13):

John P. McWilliams—Year 1941:

700 shares of International Nickel of Canada, Ltd.
200 shares of Eastman Kodak Company.
700 shares of General Electric Company.
100 shares of Monsanto Chemical Company.
100 shares of Cerro de Pasco.

100 shares of Westinghouse Electric Company.

Brooks B. McWilliams—Year 1940:

300 shares of General Electric.
100 shares of Standard Oil Company of New Jersey.
200 shares of International Nickel Company of Canada, Ltd.

Brooks B. McWilliams—Year 1941:

1,000 shares of Basic Refractories, Inc.
300 shares of Libby-Owens-Ford Glass Company.
100 shares of E. I. DuPont deNemours Company.
200 shares of General Motors Corporation.
100 shares of American Tel. & Tel. Company.
200 shares of Liggett & Myers Tobacco Company.

All of the above securities were sold pursuant to orders given to Curtiss-House & Company, stockbrokers in Cleveland, Ohio, and were executed on the New York Stock Exchange in the regular manner by Clark, Dodge & Company, members of the New York Stock Exchange and correspondents of Curtiss-House & Company. The securities had all been acquired and held by the taxpayers more than 18 months prior to their sale. The purchasers of the securities were unknown to the taxpayers. (R. 13.)

At the time that Mr. McWilliams placed the orders for sale of the above securities for his individual account he instructed his brokers to purchase a like number of the same shares at as nearly the same price as possible for the account of his wife. Likewise, when giving the orders to sell the shares for his wife's account he instructed his brokers to purchase a like number of the same shares for his individual account. These instructions were carried out and new certificates bearing different numbers from those sold were issued to the taxpayers. The purchase orders were executed in the same manner as the sales orders. (R. 13.) It appears that in each instance the purchase orders were in fact executed on the same days and at precisely the same prices as the matching sales orders. (R. 23–24, 57–59.)

His wife in 1940 and 1941 owned property greatly in excess of the amounts involved in the transactions under consideration. During all of her married life her securities have stood in her own name and have been kept separate from those of her husband. She has maintained a separate bank account and she and taxpayer have filed separate income tax returns. (R. 13–14.)

On the above-mentioned sales Mr. McWilliams claimed long-term capital losses of $21,276.53 in 1941, and his wife claimed similar losses of $5,592.49 in 1940, and $13,946.95 in 1941. The deductions were disallowed by the Commissioner as coming within the provisions of Section 24 (b)

of the Internal Revenue Code, which denies losses from sales "directly or indirectly * * * Between members of a family * * *." (R. 14.)

Under substantially the same circumstances as those described above, relating to the sales and purchase of securities by Mr. McWilliams and his wife, he on November 28, 1940, sold 100 shares of Eastman Kodak Company stock for the account of his mother, Susan P. McWilliams, and on the same day purchased a like number of the same shares at the same price for his individual account. A long-term capital loss on the sales of those shares in the amount of $1,755.79 was claimed in the return filed by Susan P. McWilliams, and was disallowed by the Commissioner. (R. 14, 45.)

The Tax Court decided that the taxpayers were entitled to deduct the losses in question on the ground that the transactions between the various taxpayers did not constitute sales, directly or indirectly, between the members of a family within the meaning of Section 24 (b) (1) of the Internal Revenue Code. The Commissioner appealed to the Circuit Court of Appeals for the Sixth Circuit which reversed the decision of the Tax Court, with Judge Miller dissenting.

SUMMARY OF ARGUMENT

The statutory provisions here involved were first enacted in the Revenue Act of 1934. Congress had been deeply concerned with devices for

tax avoidance and the 1934 Act was primarily a loophole-closing statute. One of the tax-avoidance techniques commonly employed was the sale of securities between members of a family in order to establish loss deductions, thereby reducing the tax that would otherwise be imposed upon income actually received. This basic device had appeared in a variety of forms, and received widespread attention, particularly in such notorious cases as that of Charles E. Mitchell.

Prior to the 1934 Act, the Government challenged such sales, but was successful only where it could be shown that they were not *bona fide*. However, the intimacy of the family relationship enabled persons to enter into transactions having the outward appearance of sales which were in fact mere shams, and it was exceedingly difficult for the Government to establish the absence of *bona fides* since the facts were generally within the control of the parties themselves. Accordingly, in order to eliminate this device effectively, Congress provided that no deductions should be allowed in any case on account of loss from sales or exchanges between members of a family. And knowing that such transactions could be accomplished in an almost infinite variety of ways, Congress further provided that there was to be no deduction whether the sales or exchanges be executed "directly or indirectly." This sweeping language aptly describes the broad legislative aim that anticipatory arrangements however circui-

tous or skillfully devised may not be availed of to circumvent the purpose of Congress; it conveys the meaning that the plan must be looked at as a whole, and that the true nature of the transaction is not to be disguised by interposing intermediate steps between the initial step and the end result.

The court below was not precluded under the rule of the *Dobson* case from reversing the judgment of the Tax Court. The decisions of the Tax Court did not rest upon the mere application of the statute to a particular set of facts. The Tax Court had laid down a general rule, namely, that the statute is inapplicable in every case where the Stock Exchange and unknown purchasers and sellers are interposed between the original sale by the taxpayer and the final purchase by a member of his family. Its decision therefore presented a clear cut question of law, as to the scope of an act of Congress, and was therefore subject to appellate review.

ARGUMENT

THE COURT BELOW CORRECTLY HELD THAT TRANSACTIONS IN QUESTION WERE SALES OR EXCHANGES "INDIRECTLY" BETWEEN THE MEMBERS OF A FAMILY WITHIN THE MEANING OF SECTION 24 (b) (1) OF THE INTERNAL REVENUE CODE

Section 24 (b) (1) (A) of the Internal Revenue Code, *supra*, pp. 2–3, provides in part that in computing net income no deduction shall in any case be allowed in respect of losses from sales or exchanges of property, directly or indirectly, between members of a family, and Section 24 (b)

(2) (D), *supra*, provides in part that the family of an individual shall include his spouse and his ancestors.

There is no dispute as to the facts in this case; most of them were stipulated (R. 20–77).

The only substantial question in this case, under the findings as made by the Tax Court, is one of statutory construction. The court below has held that the interposition of the Stock Exchange does not, as a matter of law, remove the transaction from the provisions of Section 24 (b) (1), where the sale and purchase of identical stock interests by members of a family are executed pursuant to a pre-arranged plan. The Tax Court, on the other hand, relying on a prior decision, has held as a matter of law, that (R. 16):

> * * * where listed securities are sold through the Stock Exchange to an unknown purchaser, and like securities are purchased through the Exchange from an unknown seller by some person having a relationship to the seller such as that described in section 24 (b) (1), Internal Revenue Code, the transaction does not constitute a sale of property upon which a loss deduction is denied under the statute.

We submit that the court below correctly reversed the judgment of the Tax Court, since this interpretation of the statute unduly restricts its scope, and does violence to the legislative purpose.

1. *Background of the statutory provisions.*—The provisions of Section 24 (b) (1) of the In-

ternal Revenue Code, here involved, first appeared in the law as Section 24 (a) (6) of the Revenue Act of 1934 (c. 277, 48 Stat. 680). The purpose of these provisions and the general aim of the 1934 Act itself are important factors to be kept in mind in construing the statute.

The 1934 Act was designed primarily as a loophole-closing statute. Widespread abuses under pre-existing law had been brought to the attention of Congress (cf. 78 Cong. Rec. 2664). Representative Doughton, in expounding upon the bill which later became the 1934 Act, stated that it was intended to raise additional revenue "not through any material increase in tax rates but chiefly by the prevention of tax avoidance", and he noted that "a great many of our wealthy taxpayers have found means, through expert legal advice, to avoid the surtaxes * * *". 78 Cong. Rec. 2510.

A familiar device to avoid surtax, where the taxpayer had investments that showed paper losses, was the sale of such investments to a member of the taxpayer's family. In this manner, the taxpayer would be able to claim the loss as a deduction for tax purposes, and yet keep the investments within the family, presumably subject to ready reacquisition by him whenever he should desire. The Commissioner challenged this device in a number of cases, and was successful where it was shown that the transaction was not "bona fide". The case of Charles E. Mitchell was perhaps one of the most notorious, and received

widespread attention. See *Mitchell* v. *Commissioner*, 32 B. T. A. 1093.[1] Cf. *DuPont* v. *Commissioner*, 118 F. 2d 544 (C. C. A. 3), certiorari denied, 314 U. S. 623; *Esperson* v. *Commissioner*, 89 F. (2d) 259 (C. C. A. 5), certiorari denied, 284 U. S. 658. However, since the control of the facts was generally in the hands of the taxpayer himself, the Government encountered considerable difficulty in establishing that a particular sale was lacking in *bona fides*.[2] It became increasingly clear that effective enforcement of the statute

[1] This case also involved civil fraud penalties, and to that extent the decision was reversed by the Circuit Court of Appeals for the Second Circuit by reason of a prior acquittal of the taxpayer in a criminal case. 89 F. 2d 873. However, this Court, in turn, reversed the judgment of the Circuit Court of Appeals. *Helvering* v. *Mitchell*, 303 U. S. 391.

The *Mitchell* case was specifically called to the attention of Congress in connection with the very provisions here involved. In explaining these provisions to the House, Representative Hill stated (78 Cong. Rec. 2662):

"We have also provided in this bill that transfers between members of the family for the purpose of creating a loss to be offset against ordinary income shall not be recognized for such deduction purposes. This will meet the Mitchell tax-avoidance case."

[2] As illustrations of the approach of the Board of Tax Appeals and of the courts to the problem of sales between husband and wife under the law prior to 1934, see *Zimmermann* v. *Commissioner*, 36 B. T. A. 279, reversed, *per curiam*, on another issue, 100 F. 2d 1023 (C. C. A. 3); *Peters* v. *Commissioner*, 28 B. T. A. 976, appeal dismissed, 69 F. 2d 969 (C. C. A. 1); *Uihlein* v. *Commissioner*, 30 B. T. A. 399, affirmed, 82 F. 2d 944 (C. C. A. 7); *Hill* v. *United States*, 12 F. Supp. 798 (C. Cls.); *Commissioner* v. *Hale*, 67 F. 2d 561 (C. C. A. 1).

would be possible only if deductions for losses were disallowed in all cases of sales within the family group. The report of a subcommittee of the House Ways and Means Committee in 1938, which made a general study of tax avoidance, proposed that the statute be amended to deny deductions in such cases, and it concluded that (Preliminary Report of a Subcommittee of the Committee on Ways and Means on Prevention of Tax Avoidance, 73d Cong., 2d Sess., p. 15):

> * * * It is believed that the recommendation of the subcommittee, if followed, will effectually close this opportunity for tax avoidance.

The recommendation was adopted by the full Ways and Means Committee. The Committee Report stated that the primary purpose of the Revenue Act of 1934 was "to increase the revenue by preventing tax avoidance." H. Rep. No. 704, 73d Cong., 2d Sess., p. 1 (1939–1 Cum. Bull. (Part 2) 554, 571). As to the purpose of Section 24 (a), (6) of the Act the Committee Report stated (p. 23):

> Experience shows that the practice of creating losses through transactions between members of a family and close corporations has been frequently utilized for avoiding the income tax. It is believed that the proposed change will operate to close this loophole of tax avoidance.

See also S. Rep. No. 558, 73d Cong., 2d Sess., p. 27 (1939–1 Cum. Bull. (Part 2), 586, 607).[3]

2. *The sales here involved fall within Section 24 (b) (1).*—It seems clear both from the broad language of the statute and from the legislative background that Congress has plainly expressed its will that no deductions shall be allowed on account of transactions, however executed, which amount to nothing more than a reshuffling of the family portfolio. Obviously, a sale between husband and wife could be executed in innumerable ways. Congress was aware of the ingenuity of tax experts and was undoubtedly also aware of the futility of attempting to catalogue every conceivable device by which such a sale could in effect be

[3] The Revenue Act of 1936 simply reenacted Section 24 (a) (6) in its previous form. In June 1937, however, the President in a special message to Congress urged a further effort to prevent tax avoidance. H. Doc. No. 260, 75th Cong., 1st Sess. A special Joint Committee of Congress on Tax Evasion and Avoidance was formed and included in its recommendations was the provision for the prohibition of losses between a fiduciary of a trust and any beneficiary thereof. H. Doc. No. 337, 75th Cong., 1st Sess., pp. 14–15. The recommendation was adopted with the following explanation incorporated in the House Committee Report (H. Rep. No. 1546, 75th Cong., 1st Sess., p. 26 (1939–1 Cum. Bull. (Part 2) 704, 722–723)):

"Under existing law section 24 (a) (6) of the Revenue Act of 1936, losses are specifically denied in the case of sales or exchange of property between members of a family or between a shareholder and a corporation in which such shareholder and his immediate family owns more than 50 percent in value of the outstanding stock. This provision of existing law is not exclusive and the

achieved.[3] Instead of attempting such particularity, Congress wisely used general language and plainly expressed its will by disallowing deductions on all sales between members of a family, whether the sales be made "directly or indirectly". In this context, the word "indirectly" speaks volumes.

It seems inconceivable that in using such comprehensive language Congress nevertheless in-

---

Government may still deny losses in the case of sales or exchanges not specifically covered thereby (for instance, between uncle and nephew) if such sales or exchanges are not bona fide. However, because the evidence necessary to establish the fact that a sale or exchange was not made in good faith is almost wholly within the knowledge of the person claiming the deduction, the Government has encountered considerable difficulty in sustaining the disallowance of the deduction in a great many cases. Moreover, the specific provisions of section 24 (a) (6) of existing law have proved inadequate to meet many situations of this type. Accordingly, your committee proposes the amendment of this section to provide certain additional restrictions on deductions of this character. However, as in the case of the provisions of existing law, it is not intended by this amendment to imply any legislative sanction of claiming deductions for losses on sales or exchanges in cases not covered thereby, where the transaction lacks the elements of good faith or finality, generally characterizing sales and exchanges of property."

[3] For examples of such devices, see *Allen* v. *Commissioner*, 38 B. T. A. 160 (purported gift of money by husband to wife followed by sale of stock to her through a broker); *Brochon* v. *Commissioner*, 30 B. T. A. 404 (stock held by taxpayer on margin was sold by broker and at the same time a like amount of same stock was purchased on margin by same broker in the name of taxpayer's wife, the taxpayer being required to guarantee his wife's ac-

tended to leave a loophole for such transactions as are involved herein. We submit that the court below correctly interpreted the statute as embracing the present situation. The same result was also reached by the Circuit Court of Appeals for the Fourth Circuit in *Commissioner* v. *Kohn*, 158 F. 2d 32. The court said (158 F. 2d at 34):

> If the adverb "indirectly" in the statute has any meaning (as Congress unques-

---

count); *Porter* v. *Commissioner*, 36 B. T. A. 475 (sale by husband and purchase by wife of same securities on same day through same broker, the husband making a "gift" of the proceeds of his sale to his wife with which she paid for her purchases); *Arguimbau* v. *Commissioner*, 31 B. T. A. 604 (sale by wife and purchase by husband on same day through same broker of same securities, followed by wife depositing the amount of the purchase price to husband's account); *Cole* v. *Helburn*, 4 F. Supp. 230 (W. D. Ky.) (sale by taxpayer and purchase by son on following day through same brokers of same securities, taxpayer "lending" his son the amount of the purchase price; loan never paid and six months later stock reacquired by taxpayer from son); *Shoenberg* v. *Commissioner*, 77 F. 2d 446 (C. C. A. 8), certiorari denied, 296 U. S. 586 (sale by taxpayer of securities through a broker and purchase on same day of the same securities by his controlled corporation, the taxpayer reacquiring the securities from the corporation more than thirty days later); *Commissioner* v. *Behan*, 90 F. 2d 609 (C. C. A. 2) (sales and purchases on same day by husband and wife through same broker, the seller making a "gift" of proceeds of sale to the purchaser); *Powell* v. *Commissioner*, 94 F. 2d 483 (C. C. A. 1) (sale by taxpayer of stock through brokers and purchase on same day by a trust of which taxpayer was trustee of identical securities, followed more than thirty days later, by sale by trust of same stock through brokers and purchase on same day of identical securities by taxpayer).

> tionably intended), it must have been used to prevent just such transactions as are here involved. Otherwise evasion through the family device is almost invited.

A contrary holding appears in *Commissioner* v. *Ickelheimer*, 132 F. 2d 660 (C. C. A. 2), but we submit that Judge Learned Hand's dissenting opinion states the correct view. He said (132 F. 2d at 662):

> * * *. Here we can have no doubt of the purpose of what Congress was aiming at; and that, I submit, we truncate, if we do not include transactions by which, in accordance with a preexisting design, property passes by whatever combination of moves at a substantially unchanged price from one member to the other of any of the specified pairs. Finally there is no difference between on the one hand, selling units of fungibles and buying other units, and on the other the sale of single units. That seems so obvious that I shall not labor the point; * * *.

Indeed, even if Congress had not used the words "directly or indirectly", it could have been argued persuasively that such transactions as are here involved constitute sales between the parties. For, as this Court has often held, the substance of a transaction rather than its form is the determinative criterion. Cf., e. g., *Griffiths* v. *Commissioner*, 308 U. S. 355. "A given result at the end of a straight path is not made a different

result because reached by following a devious path." *Minnesota Tea Co.* v. *Helvering*, 302 U. S. 609, 613. Cf. *Gregory* v. *Helvering*, 293 U. S. 465; *Higgins* v. *Smith*, 308 U. S. 473; *Commissioner* v. *Court Holding Co.*, 324 U. S. 331. By the use of the words "directly or indirectly" in Section 24 (b) (1) Congress has, we submit, enacted in apt language the principles embodied in the foregoing cases. The use of the Stock Exchange as a circuitous means for shifting the investment from one member of the family to another is precisely the type of situation to which the adverb "indirectly" was meant to apply.

The holding of the Tax Court gives improper emphasis to the word "between" used in Section 24 (b) and unwarranted importance to the fact that when a sale or purchase is made upon the Stock Exchange the seller deals with an unknown purchaser and the buyer deals with an unknown seller. This view disguises the transaction by mere formalism and in effect deprives the word "indirectly" used in the statute of substantial meaning. The tracing of the old certificates or the issuance of new certificates bearing different numbers from those sold is, we submit, of no real significance. This Court has recognized that certificates of stock are not the property itself but merely the evidence of it and that a certificate for the same number of shares represents precisely the same kind and value of property as another

certificate for a like number of shares in the same corporation; that the return by a broker of a different certificate or the substitution of one certificate for another makes no material change in the property right of the customer; that such shares are unlike distinct articles of personal property, differing in kind or value, as a horse, wagon, or harness, and that stock has no earmark which distinguishes one share from another but is like grain of a uniform quality in an elevator, one bushel being of the same kind and value as another. *Gorman* v. *Littlefield,* 229 U. S. 19, 23. See also *Duel* v. *Hollins,* 241 U. S. 523; 1 Williston on Sales (2d ed.), Sections 146–159.

In the present case, what one member of the family disposed of by sale, namely, certain shares of corporate stock, another member of the family acquired by purchase. The preconceived plan that the sale by one member should be followed by the purchase by another member of identical property indisputably establishes a connection between the sale and the purchase and between the seller and the purchaser. It is this connection that establishes the transaction as being "between" them, and to the extent that there is a formal hiatus in the execution of the plan on the Stock Exchange, that hiatus is rendered immaterial by the use of the word "indirectly" in Section 24 (b) (1).

We respectfully submit that the statute should be construed so as to give effect to the legislative purpose. See *United States* v. *Amer. Trucking Ass'ns*, 310 U. S. 534, 544. Particularly is this true where a taxpayer, as here, is claiming a deduction from gross income, for he must show that he comes squarely within the terms of the statutory provision allowing the deduction. *New Colonial Co.* v. *Helvering*, 292 U. S. 435, 440; *Helvering* v. *Northwest Steel Mills*, 311 U. S. 46, 49; *Deputy* v. *duPont*, 308 U. S. 488, 493; *White* v. *United States*, 305 U. S. 281, 292; *Helvering* v. *Inter-Mountain Life Insurance Co.*, 294 U. S. 686, 689–690; *McDonald* v. *Commissioner*, 323 U. S. 57, 60; *Equitable Society* v. *Commissioner*, 321 U. S. 560, 564; *Interstate Transit Lines* v. *Commissioner*, 319 U. S. 590, 593.

The section of the Act under which the taxpayers claim the losses is Section 23 (e) of the Internal Revenue Code (26 U. S. C. 1940 ed., Sec. 23), allowing losses on transactions entered into for profit. Section 24 (b) is an express limitation upon the loss provision, and provides that no deduction shall in any case be allowed in respect of losses from sales or exchanges of property, directly or indirectly, between members of a family, and defines family as including one's spouse and one's ancestors. Since the court below was construing a limitation on a deduction, it would seem proper for it to have resolved any

doubt about the meaning of the word "indirectly" in favor of the Commissioner and against the taxpayer.

3. *The Tax Court's interpretation of Section 24 (b) (1) was reviewable by the court below.*— The taxpayers contend that the court below erred in reversing a factual finding of the Tax Court supported by substantial evidence, contrary to the rule first laid down by this Court in *Dobson* v. *Commissioner*, 320 U. S. 489 (Br. 4). But there is no dispute between the parties as to the facts, and the Government does not challenge a single finding of fact made by the Tax Court. The Government challenges only the rule of law announced by the Tax Court that (R. 16):

> * * * where listed securities are sold through the Stock Exchange to an unknown purchaser, and like securities are purchased through the Exchange from an unknown seller by some person having a relationship to the seller such as that described in section 24 (b) (1), Internal Revenue Code, the transaction does not constitute a sale of property upon which a loss deduction is denied under the statute.

The decision of the Tax Court did not involve the mere application of the statute to a particular set of facts. It undertook to establish a rule of general applicability; it constituted an interpretation of Section 24 (b), and particularly of the word "indirectly". The issue is therefore one of

law. *Trust of Bingham* v. *United States*, 325 U. S. 365.[9]

The Government does not argue that every application of this statute to a particular set of facts by the Tax Court is reviewable. Thus, we would agree that the *Dobson* rule applies if the Tax Court, in ruling against the Commissioner, had found, on substantial evidence, that a taxpayer had sold the same number of shares of the same stock which, by pure coincidence, had been purchased on the same day by a member of his family in another city. But where the purchase and sale are parts of a single plan, as shown by undisputed findings of the Tax Court, then the Tax Court errs as a matter of law when it holds that the statute is inapplicable by reason of the interposition of the Stock Exchange between the members of the family involved. Such a general ruling, which is not limited to the facts of the

[9] See also *Crane* v. *Commissioner*, No. 68, this Term, decided April 14, 1947; *Security Mills Co.* v. *Commissioner*, 321 U. S. 281, 286; *Douglas* v. *Commissioner*, 322 U. S. 275; *Commissioner* v. *Harmon*, 323 U. S. 44; *McDonald* v. *Commissioner*, 323 U. S. 57; *Claridge Apartments Co.* v. *Commissioner*, 323 U. S. 141, 145; *Fondren* v. *Commissioner*, 324 U. S. 18; *Choate* v. *Commissioner*, 324 U. S. 1; *Commissioner* v. *Estate of Field*, 324 U. S. 113; *Webre Steib Co.* v. *Commissioner*, 324 U. S. 164; *Commissioner* v. *Smith*, 324 U. S. 177; *Commissioner* v. *Wemyss*, 324 U. S. 303; *Commissioner* v. *Wheeler*, 324 U. S. 542; *Estate of Putnam* v. *Commissioner*, 324 U. S. 393; *Angelus Milling Co.* v. *Commissioner*, 325 U. S. 293; *Commissioner* v. *Estate of Bedford*, 325 U. S. 283; *Commissioner* v. *Disston*, 325 U. S. 442.

particular case, and which misconceives the scope of the statute, is plainly subject to appellate review.

CONCLUSION

The decision of the court below is correct and should therefore be affirmed.

Respectfully submitted.

GEORGE T. WASHINGTON,
Acting Solicitor General.
SEWALL KEY,
Acting Assistant Attorney General.
ARNOLD RAUM,
LEE A. JACKSON,
MORTON K. ROTHSCHILD,
Special Assistants to the Attorney General.

APRIL, 1947.

U. S. GOVERNMENT PRINTING OFFICE, 1947

SUPREME COURT OF THE UNITED STATES

Nos. 945, 946 AND 947.—OCTOBER TERM, 1946.

John P. McWilliams, Petitioner, 945 *v.* Commissioner of Internal Revenue. Estate of Susan P. McWilliams, Deceased, John P. McWilliams, Executor, Petitioners, 946 *v.* Commissioner of Internal Revenue. Brooks B. McWilliams, Petitioner, 947 *v.* Commissioner of Internal Revenue.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[June 16, 1947.]

MR. CHIEF JUSTICE VINSON delivered the opinion of the Court.

The facts of these cases are not in dispute. John P. McWilliams, petitioner in No. 945, had for a number of years managed the large independent estate of his wife, petitioner in No. 947, as well as his own. On several occasions in 1940 and 1941 he ordered his broker to sell certain stock for the account of one of the two, and to buy the same number of shares of the same stock for the other, at as nearly the same price as possible. He told the broker that his purpose was to establish tax losses. On each occasion the sale and purchase were promptly negotiated through the Stock Exchange, and the identity of the persons buying from the selling spouse and of the persons selling to the buying spouse was never known. Invariably, however, the buying spouse received stock certificates different from those which the other had

sold. Petitioners filed separate income tax returns for these years, and claimed the losses which he or she sustained on the sales as deductions from gross income.

The Commissioner disallowed these deductions on the authority of § 24 (b) of the Internal Revenue Code,[1] which prohibits deductions for losses from "sales or exchanges of property, directly or indirectly . . . between members of a family," and between certain other closely related individuals and corporations.

On the taxpayers' applications to the Tax Court, it held § 24 (b) inapplicable, following its own decision in *Ickelheimer* v. *Commissioner*,[2] and expunged the Commission-

---

[1] The material parts of § 24 (b) are as follows:

"(b) *Losses from sales or exchanges of property.*

"(1) *Losses disallowed.* In computing net income no deduction shall in any case be allowed in respect of losses from sales or exchanges of property, directly or indirectly—

"(A) Between members of a family, as defined in paragraph (2) (D);

"(B) Except in the case of distributions in liquidation, between an individual and a corporation more than 50 per centum in value of the outstanding stock of which is owned, directly or indirectly, by or for such individual;

"(C) Except in the case of distributions in liquidation, between two corporations more than 50 per centum in value of the outstanding stock of each of which is owned, directly or indirectly, by or for the same individual, if either one of such corporations, with respect to the taxable year of the corporation preceding the date of the sale or exchange was, under the law applicable to such taxable year, a personal holding company or a foreign personal holding company;

"(D) Between a grantor and a fiduciary of any trust;

"(E) Between the fiduciary of a trust and the fiduciary of another trust, if the same person is a grantor with respect to each trust; or

"(F) Between a fiduciary of a trust and a beneficiary of such trust."

Section 24 (b) (2) (D) defines the family of an individual to include "only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; . . ."

[2] 45 B. T. A. 478, affirmed, 132 F. 2d 660 (CCA 2).

er's deficiency assessments.[3] The Circuit Court of Appeals reversed the Tax Court[4] and we granted certiorari[5] because of a conflict between circuits[6] and the importance of the question involved.

Petitioners contend that Congress could not have intended to disallow losses on transactions like those described above, which, having been made through a public market, were undoubtedly bona fide sales, both in the sense that title to property was actually transferred, and also in the sense that a fair consideration was paid in exchange. They contend that the disallowance of such losses would amount, *pro tanto*, to treating husband and wife as a single individual for tax purposes.

In support of this contention, they call our attention to the pre-1934 rule, which applied to all sales regardless of the relationship of seller and buyer, and made the deductibility of the resultant loss turn on the "good faith" of the sale, *i. e.*, whether the seller actually parted with title and control.[7] They point out that in the case of the usual intra-family sale, the evidence material to this

---

[3] 5 T. C. 623.

[4] 158 F. 2d 637 (CCA 6).

[5] — U. S. —. In No. 946, the petition for certiorari of the Estate of Susan P. McWilliams, the deceased mother of John P. McWilliams, was granted at the same time as the petitions in Nos. 945 and 947, and the three cases were consolidated in this Court. As all three present the same material facts and raise precisely the same issues, no further reference will be made to the several cases separately.

[6] The decision of the Circuit Court of Appeals for the Second Circuit in *Commissioner* v. *Ickelheimer*, *supra*, note 2, is in conflict on this point with the decision of the Circuit Court of Appeals for the Sixth Circuit in the present case, and also with that of the Circuit Court of Appeals for the Fourth Circuit in *Commissioner* v. *Kohn*, 158 F. 2d 32.

[7] *Commissioner* v. *Hale*, 67 F. 2d 561 (CCA 1); *Zimmerman* v. *Commissioner*, 36 B. T. A. 279, reversed on other grounds, 100 F. 2d 1023 (CCA 3); *Uihlein* v. *Commissioner*, 30 B. T. A. 399, affirmed, 82 F. 2d 944 (CCA 7).

issue was peculiarly within the knowledge and even the control of the taxpayer and those amenable to his wishes, and inaccessible to the Government.[8] They maintain that the only purpose of the provisions of the 1934 and 1937 Revenue Acts—the forerunners of § 24 (b)[9]—was to overcome these evidentiary difficulties by disallowing losses on such sales irrespective of good faith. It seems to be petitioners' belief that the evidentiary difficulties so contemplated were only those relating to proof of the parties' observance of the formalities of a sale and of the fairness of the price, and consequently that the legislative remedy applied only to sales made immediately from one member of a family to another, or mediately through a controlled intermediary.

We are not persuaded that Congress had so limited an appreciation of this type of tax avoidance problem. Even assuming that the problem was thought to arise solely out of the taxpayer's inherent advantage in a contest concerning the good or bad faith of an intra-family sale, deception could obviously be practiced by a buying spouse's agreement or tacit readiness to hold the property sold at the disposal of a selling spouse, rather more easily than by a pretense of a sale where none actually occurred, or by an unfair price. The difficulty of determining the finality of an intra-family transfer was one with which the courts wrestled under the pre-1934 law,[10] and which

---

[8] See H. Rep. No. 1546, 75th Cong., 1st Sess., p. 26 (1939–1 Cum. Bull. (Part 2) 704, 722–723). See also cases cited in note 7, *supra*.

[9] The provisions of § 24 (b) (1) (A) and (B) of the Internal Revenue Code originated in § 24 (a) (6) of the Revenue Act of 1934, 48 Stat. 680, 691. These provisions were reenacted without change as § 24 (a) (6) of the Revenue Act of 1936, 49 Stat. 1648, 1662, and the provisions of § 24 (b) (1) (C), (D), (E), and (F) of the Code were added by § 301 of the 1937 Act, 50 Stat. 813, 827.

[10] Cf. *Shoenberg* v. *Commissioner*, 77 F. 2d 446 (CCA 8); *Cole* v. *Helburn*, 4 F. Supp. 230; *Zimmerman* v. *Commissioner*, *supra*, note 7.

Congress undoubtedly meant to overcome by enacting the provisions of § 24 (b).[11]

It is clear, however, that this difficulty is one which arises out of the close relationship of the parties, and would be met whenever, by prearrangement, one spouse sells and another buys the same property at a common price, regardless of the mechanics of the transaction. Indeed, if the property is fungible, the possibility that a sale and purchase may be rendered nugatory by the buying spouse's agreement to hold for the benefit of the selling spouse, and the difficulty of proving that fact against the taxpayer, are equally great when the units of the property which the one buys are not the identical units which the other sells.

Securities transactions have been the most common vehicle for the creation of intra-family losses. Even if we should accept petitioners' premise that the only purpose of § 24 (b) was to meet an evidentiary problem, we could agree that Congress did not mean to reach the transactions in this case only if we thought it completely indifferent to the effectuality of its solution.

Moreover, we think the evidentiary problem was not the only one which Congress intended to meet. Section 24 (b) states an absolute prohibition—not a presumption—against the allowance of losses on any sales between the members of certain designated groups. The one common characteristic of these groups is that their members, although distinct legal entities, generally have a near-identity of economic interests.[12] It is a fair inference that even legally genuine intra-group transfers were not thought to result, usually, in economically genuine realizations of loss, and accordingly that Congress did not deem

[11] See H. Rep. No. 1546, 75th Cong., 1st Sess., p. 24, *supra*, note 8.

[12] See the text of § 24 (b) (1), quoted in note 1.

them to be appropriate occasions for the allowance of deductions.

The pertinent legislative history lends support to this inference. The Congressional Committees, in reporting the provisions enacted in 1934, merely stated that "the practice of creating losses through transactions between members of a family and close corporations has been frequently utilized for avoiding the income tax," and that these provisions were proposed to "deny losses to be taken in the case of [such] sales" and "to close this loophole of tax avoidance." [13] Similar language was used in reporting the 1937 provisions.[14] Chairman Doughton of the Ways and Means Committee, in explaining the 1937 provisions to the House, spoke of "the artificial taking and establishment of losses where property was shuffled back and forth between various legal entities owned by the same persons or person," and stated that "these transactions seem to occur at moments remarkably opportune to the real party in interest in reducing his tax liability but, at the same time allowing him to keep substantial control of the assets being traded or exchanged." [15]

We conclude that the purpose of § 24 (b) was to put an end to the right of taxpayers to choose, by intra-family

---

[13] H. Rep. No. 704, 73d Cong., 2d Sess., p. 23 (1939–1 Cum. Bull. (Part 2) 554, 571); S. Rep. No. 558, 73d Cong., 2d Sess., p. 27 (1939–1 Cum. Bull. (Part 2) 586, 607).

[14] The type of situations to which these provisions applied was described as being that "in which due to family relationships or friendly control, artificial losses might be created for tax purposes." H. Rep. No. 1546, 75th Cong., 1st Sess., p. 28 (1939–1 Cum. Bull. (Part 2) 704, 724).

[15] 81 Cong. Rec. 9019. Representative Hill, chairman of a House subcommittee on the income-tax laws, explained to the House with reference to the 1934 provisions that the Committee had "provided in this bill that transfers between members of the family for the purposes of creating a loss to be offset against ordinary income shall not be recognized for such deduction purposes." 78 Cong. Rec. 2662.

transfers and other designated devices, their own time for realizing tax losses on investments which, for most practical purposes, are continued uninterrupted.

We are clear as to this purpose, too, that its effectuation obviously had to be made independent of the manner in which an intra-group transfer was accomplished. Congress, with such purpose in mind, could not have intended to include within the scope of § 24 (b) only simple transfers made directly or through a dummy, or to exclude transfers of securities effected through the medium of the Stock Exchange, unless it wanted to leave a loop-hole almost as large as the one it had set out to close.

Petitioners suggest that Congress, if it truly intended to disallow losses on intra-family transactions through the market, would probably have done so by an amendment to the wash sales provisions,[16] making them applicable where the seller and buyer were members of the same family, as well as where they were one and the same individual. This extension of the wash sales provisions, however, would bar only one particular means of accomplishing the evil at which § 24 (b) was aimed, and the

---

[16] Sec. 118 of the Internal Revenue Code, which first appeared in its present form as § 118 of the Revenue Act of 1932, 47 Stat. 169, 208, provides in part as follows:

"§ 118. *Loss from wash sales of stock or securities.*

"(a) In the case of any loss claimed to have been sustained from any sale or other disposition of shares of stock or securities where it appears that, within a period beginning 30 days before the date of such sale or disposition and ending 30 days after such date, the taxpayer has acquired (by purchase or by an exchange upon which the entire amount of gain or loss was recognized by law), or has entered into a contract or option so to acquire, substantially identical stock or securities, then no deduction for the loss shall be allowed under section 23 (e) (2); nor shall such deduction be allowed under section 23 (f) unless the claim is made by a corporation, a dealer in stocks or securities, and with respect to a transaction made in the ordinary course of its business."

necessity for a comprehensive remedy would have remained.

Nor can we agree that Congress' omission from § 24 (b) of any prescribed time interval, comparable in function to that in the wash sales provisions, indicates that § 24 (b) was not intended to apply to intra-family transfers through the Exchange. Petitioners' argument is predicated on the difficulty which courts may have in determining whether the elapse of certain periods of time between one spouse's sale and the other's purchase of like securities on the Exchange is of great enough importance in itself to break the continuity of the investment and make § 24 (b) inapplicable. . .

Precisely the same difficulty may arise, however, in the case of an intra-family transfer through an individual intermediary, who, by pre-arrangement, buys from one spouse at the market price and a short time later sells the identical certificates to the other at the price prevailing at the time of sale. The omission of a prescribed time interval negates the applicability of § 24 (b) to the former type of transfer no more than it does to the latter. But if we should hold that it negated both, we would have converted the section into a mere trap for the unwary.[17]

Petitioners also urge that, whatever may have been Congress' intent, its designation in § 24 (b) of sales "between" members of a family is not adequate to compre-

[17] We have noted petitioners' suggestion that a taxpayer is assured, under the wash sales provisions, of the right to deduct the loss incurred on a sale of securities, even though he himself buys similar securities thirty-one days later; and that he should certainly not be precluded by § 24 (b) from claiming a similar loss if the taxpayer's spouse, instead of the taxpayer, makes the purchase under the same circumstances. We do not feel impelled to comment on these propositions, however, in a case in which the sale and purchase were practically simultaneous and the net consideration received by one spouse and that paid by the other differed only in the amount of brokers' commissions and excise taxes.

hend the transactions in this case, which consisted only of a sale of stock by one of the petitioners to an unknown stranger, and the purchase of different certificates of stock by the other petitioner, presumably from another stranger.

We can understand how this phraseology, if construed literally and out of context, might be thought to mean only direct intra-family transfers. But petitioners concede that the express statutory reference to sales made "directly or indirectly" precludes that construction. Moreover, we can discover in this language no implication whatsoever that an indirect intra-family sale of fungibles is outside the statute unless the units sold by one spouse and those bought by the other are identical. Indeed, if we accepted petitioners' construction of the statute, we think we would be reading into it a crippling exception which is not there.

Finally, we must reject petitioners' assertion that the *Dobson* rule[18] controls this case. The Tax Court found the facts as we stated them, and then overruled the Commissioner's determination because it thought that § 24 (b) had no application to a taxpayer's sale of securities on the Exchange to an unknown purchaser, regardless of what other circumstances accompanied the sale. We have decided otherwise, and on our construction of the statute, and the conceded facts, the Tax Court could not have reached a result contrary to our own.[19]

Affirmed.

MR. JUSTICE BURTON took no part in the consideration or decision of these cases.

---

[18] *Dobson v. Commissioner*, 320 U. S. 489.

[19] Cf. *Trust of Bingham v. Commissioner*, 325 U. S. 365.